ONTARIO
LABOUR RELATIONS BOARD
REPORTS

July/August 2008

ONTARIO LABOUR RELATIONS BOARD

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A Bimonthly Series of Decisions from the Ontario Labour Relations Board

Cited [2008] OLRB REP. JULY/AUGUST

EDITORS: VOY STELMASZYNSKI
LEONARD MARVY

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DANIEL DIENA, A DIRECTOR OF DELES INDUSTRIES LIMITED; RE MICHAEL J. ASHTON, ET AL AND DIRECTOR OF EMPLOYMENT STANDARDS 510

Bar – Bargaining Unit – Certification – Judicial Review – The employer argued on judicial review that the Board must determine whether a bar existed pursuant to s. 10(3), prior to counting the votes – The court held the Board was interpreting its enabling statute; that it addressed labour relations principles in its reasons, including consequences of delay and possible prejudice to both sides; and that the Board was exercising its specialized expertise – The court did not agree that the issue was a threshold jurisdictional issue, but rather a procedural and administrative order, the type the court "should be loath to interfere along the way with" – Application dismissed

STOCK TRANSPORTATION LTD.; RE OLRB AND TEAMSTERS LOCAL UNION NO. 938 601

Bar – Bargaining Unit – Certification – The Teamsters sought to certify employees of Stock Transportation in the City of Toronto – The application came on the heels of three earlier applications with similar bargaining unit descriptions – Stock argued that it had no employees in the proposed bargaining unit, or that the application was barred pursuant to s. 10(3) of the Act – A representation vote was ordered and the ballot box was sealed – The Board rejected the employer's "no employees" submission because the application, like the earlier ones, relied on a "City of Toronto" description but implicitly specified municipal addresses – The union could not have intended to apply for a bargaining unit with no employees – The Board held that in counting the ballots, any prejudice to the employer was outweighed by the prejudice to the employees arising from the potential of a longer bar, given that a determination of the bar issue under s. 10(3) or 10(3.1) would require days of hearing – A counting of the ballots, without prejudice to any of the employer's positions, could also mean the end of the matter – Vote count ordered

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employer did no work that was directly or indirectly related to the agency's federal purposes in intelligence and security – Therefore, the employer's labour relations were governed by the *Labour Relations Act* and by the Board – Matter continues

RÉGULVAR CANADA INC./RÉGULVAR INC.; RE CHRISTIAN BOURGEOIS; RE THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 586 563

Bargaining Unit – Bar – Certification – Judicial Review – The employer argued on judicial review that the Board must determine whether a bar existed pursuant to s. 10(3), prior to counting the votes – The court held the Board was interpreting its enabling statute; that it addressed labour relations principles in its reasons, including consequences of delay and possible prejudice to both sides; and that the Board was exercising its specialized expertise – The court did not agree that the issue was a threshold jurisdictional issue, but rather a procedural and administrative order, the type the court "should be loath to interfere along the way with" – Application dismissed

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Bargaining Unit – Certification – Practice and Procedure – Union applied for an all employee unit where the employer had two operations: a nursing home and retirement home – Employer argued that only a two bargaining unit structure was appropriate – After the ballots were counted, a majority of employees in the nursing home voted in the union's favour, while the employees in the retirement home and all employee unit were against the union – The parties then adopted each others' positions – The Board permitted the change of positions, following *Martha's Garden* and *Morrow Transport* and noted that change of position cases are rare and are a natural outcome of the Board's processes which are designed to ensure that certification cases get dealt with quickly, effectively and without the requirement of unnecessary litigation – Finally, the Board found that a two-unit structure was appropriate (particularly given that the employer had argued, albeit at different times, that both an all employee and a two unit structure were appropriate) – Application granted, in part

NUTRA SERVICES INC.; RE SEIU LOCAL 1 CANADA..... 550

Bargaining Unit – Certification – *Prima Facie* Motion – Reconsideration – The union applied to consolidate six bargaining units into three – The employer brought a "no *prima facie* case" motion – The Board has the power to reconsider its past decisions, including certification decisions providing bargaining unit descriptions – However, certificates are spent when the parties enter into their first collective agreement – The bargaining units negotiated by the parties supersede the ones described in the Board's certificates – Hence the current bargaining units, as described in the collective agreements negotiated between the parties, supersede any consolidated units that the Board could order through its reconsideration power – The union has not made out a *prima facie* case for consolidating its bargaining units, which was the relief sought – Motion granted; application dismissed

KINGSTON WHIG STANDARD; RE KINGSTON TYPOGRAPHICAL UNION, LOCAL 30204 529

Certification – Bar – Bargaining Unit – Judicial Review – The employer argued on judicial review that the Board must determine whether a bar existed pursuant to s. 10(3), prior to counting the votes – The court held the Board was interpreting its enabling statute; that it addressed labour relations principles in its reasons, including consequences of delay and possible prejudice to both sides; and that the Board was exercising its specialized expertise – The court did not agree that the issue was a threshold jurisdictional issue, but rather a procedural and administrative order, the type the court "should be loath to interfere along the way with" – Application dismissed

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KINGSTON WHIG STANDARD; RE KINGSTON TYPOGRAPHICAL UNION, LOCAL 30204 529

Certification – Construction Industry – Practice and Procedure – Remedial Certification – The union filed an application for certification with less than 40% membership and applied for remedial certification under s. 11 – In its application the applicant failed to identify which certification regime (s. 8 or 128.1) it was choosing – The responding party argued this was fatal – The Board found, based on statements made elsewhere in the application that the applicant had elected to proceed under s. 8 – Additionally, the Board noted that s. 128.1 specifically requires an election and since the applicant had not elected s. 128.1, the application must be dealt with under s. 8 – Matter continues

ASHBRIDGE ELECTRIC CONTRACTORS LIMITED; RE IBEW, LOCAL 353 489

Certification – Employee – Status – The parties could not agree on whether certain employees were full-time or part-time – The employees in dispute ("Casual Maintenance Workers/ Operators – On Call") were paid for a minimum of twenty-five hours per week and were required to hold themselves available to the employer for those hours, albeit not at the workplace – The employer argued that these were part-time employees, relying on the Board's jurisprudence ("regularly employed for not more than twenty-fours hours" in four of the last seven weeks leading up to the application for certification) and asserting that the Board should consider "hours worked" as opposed to "hours paid" – The Board held that the disputed employees were required to demonstrate a full-time commitment to the employer and therefore should be included in the full-time bargaining unit – Count ordered

TWD ROADS MANAGEMENT INC.; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 .....

Certification – Judicial Review – Representation Vote – Stay – A request for a stay of a Board decision ordering a vote count was dismissed in March 2008, with reasons to follow – The Court held that the first part of the test for a stay requires that the applicant establish there is a strong *prima facie* case that the Board's decision is unreasonable, rather than that there was a serious issue to be tried – The applicant failed to pass this test, as well as the other criteria (irreparable harm; balance of convenience) – Stay application dismissed

EDGEWATER GARDENS LONG TERM CARE CENTRE; RE OPSEU AND OLRB.... 599

Constitutional Law – Bargaining Rights – Termination – An employee in the construction industry applied for termination of bargaining rights – The union argued that on the application date, the applicant's work was within federal jurisdiction – The applicant was installing sensors to monitor temperature and humidity in computerized offices used by a federal intelligence/security agency, a core federal undertaking – The removal of labour relations from provincial competence is exceptional, and is only appropriate when the subsidiary's work is integral to a core federal undertaking – The Board held that the sensor system was not integral to the core federal undertaking – The construction employer did no work that was directly or indirectly related to the agency's federal purposes in intelligence and security – Therefore, the employer's labour relations were governed by the *Labour Relations Act* and by the Board – Matter continues

RÉGULVAR CANADA INC./RÉGULVAR INC.; RE CHRISTIAN BOURGEOIS; RE THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 586 563

Constitutional Law – Employment Standards – The applicant sought review of an employment standards officer's refusal to issue an order to pay in circumstances where she alleged she was deprived of her position following a pregnancy leave – The Board first determined that the employer, a logistics company that coordinated international and interprovincial transportation of goods, was a provincial undertaking and subject to Ontario laws – On the substantive issue, the Board held that the legislation requires an employee returning from pregnancy leave to be returned to her original position (or if it no longer exists a comparable one), but not necessarily to all the duties and responsibilities that position entailed – The transfer of certain client accounts to other employees was not a penalty under the Act – Application dismissed

PINNACLE FREIGHT SPECIALISTS INC. AND DIRECTOR OF EMPLOYMENT STANDARDS; RE ARDELLE D. STONER 555

Construction Industry – Certification – Practice and Procedure – Remedial Certification – The union filed an application for certification with less than 40% membership and applied for remedial certification under s. 11 – In its application the applicant failed to identify which certification regime (s. 8 or 128.1) it was choosing – The responding party argued this was fatal – The Board found, based on statements made elsewhere in the application that the applicant had elected to proceed under s. 8 – Additionally, the Board noted that s. 128.1 specifically requires an election and since the applicant had not elected s. 128.1, the application must be dealt with under s. 8 – Matter continues

ASHBRIDGE ELECTRIC CONTRACTORS LIMITED; RE IBEW, LOCAL 353 489

Construction Industry – Evidence – Practice and Procedure – Related Employer – Sale of Business – Union sought to have admitted thirty year old documents as "business records," specifically a letter commenting on the binding nature of a collective agreement – The employer objected arguing that it was caught in an impossible position as it must find the author or another witness to give evidence about documents that apparently created some 30 years ago have played no role in the corporation's existence since that time – The Board found the records were not admissible pursuant to s. 35(2) of the *Evidence Act*, in that the record did not meet any of the conditions set out in the subsection – The Board also found that even if s. 111(2)(c) of the *LRA, 1995* created a wider scope than s. 35, it would not admit the record because the documents are expressions of opinion by parties whose source of information and belief cannot be ascertained, and therefore no weight could be placed on them – Additionally, the Board

applied the rule in *Browne v. Dunn* and did not admit evidence that contradicted earlier testimony by a witness where the contradiction was not put to the witness during cross examination – Matter continues

CADILLAC FAIRVIEW COROPORATION LTD., THE, CF/REALTY HOLDINGS INC., QUEENSTON ROAD INVESTMENT INC., EASTGATE SQUARE HOLDINGS INC. AND REDCLIFF REALTY MANAGEMENT INC.; RE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1795 491

Construction Industry – Parties – Termination – Timeliness – The applicant sought to terminate the bargaining rights of LIUNA Local 607 – There was no dispute that the bargaining rights were held by LIUNA, Ontario Provincial District Council – The Board found that the OPDC must have been certified on the basis of the employees' membership in Local 607, since employees can only be members of locals, and not of the council – Local 607 conducted bargaining, drafted collective agreements, and made the application for the appointment of the conciliator – The Board held that given that the OPDC and Local 607 could agree on the transfer of bargaining rights, and given such a widespread practice once a certificate had been issued, it was not unreasonable for the applicant to assume that Local 607 was his bargaining agent – The style of cause was amended to include both Local 607 and the OPDC – On the issue of the timeliness of the application, the Board held that when the application was filed on the same day as a conciliation officer was appointed, the application was timely – Submissions ordered on status issues – Matter continues

A-1 SUPERIOR PAVING AND CONCRETE WORKS COMPANY INC.; RE DANIEL WILSON; RE LIUNA – CONSTRUCTION AND ALLIED WORKERS, LOCAL 607, AND LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 485

Construction Industry Grievance – *Occupational Health and Safety Act* – The union grieved the failure of the responding party to pay employees for specific training in asbestos removal required by a Regulation under the *Occupational Health and Safety Act* – The Board found that the employer had arranged for the training and had directed the employees to attend the three-day course – Pursuant to the provisions of the Regulation as well as the collective agreement, the responding party was responsible for compensating its employees who attended the training – Owners are equally responsible as employers for compliance with the Regulation – Grievance allowed

HIGH POINT ENVIRONMENTAL INC./HPE ENVIRONMENTAL INC.; RE LIUNA, LOCAL 506 521

Construction Industry Grievance – Practice and Procedure – Reconsideration – Settlement – The applicant sought reconsideration of a default award because the parties failed to advise the Board of a settlement they had reached prior to the issuance of the default decision – The applicant had originally sought a default decision if the responding party did not file an Intent to Defend, and no such filing occurred – The Board reconsidered its decision but admonished the parties for failing to advise the Board of their settlement, causing the Board to expend time and resources to review a file and issue an unnecessary decision – Reconsideration granted; application withdrawn

NORTH ROCK GROUP LTD.; RE UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 548

Construction Industry Grievance – Practice and Procedure – The applicant failed to file and deliver its grievance referral to the responding party in accordance with s. 133 and Rule 34.2 [due to inadvertence in the solicitor's office, it was filed with the Board before being delivered to the employer] – The Board found it had the discretion under s. 133(4) to accept the referral, and, in these circumstances, did so, while also extending the time for the employer to respond – Grievance continues

VISTA SUDBURY HOTEL; RE LIUNA, LOCAL 493 591

Discharge – Interim Order – Unfair Labour Practice – The union sought interim reinstatement of five employees, pending resolution of the main application which alleged that they were discharged for union activity – The employees worked as cleaners in a plant under construction, and were dismissed when the construction was completed – The Board held that the employees appeared to have been dismissed for their earlier union activity, because there was no other reasonable explanation for their dismissal – Although the construction work was over, the employer by its own admission needed many cleaners to work in the finished plant, and these employees were already trained and gave no cause for dismissal – The Board held that the discharges occurred during an organizing campaign; there was a serious issue to be tried; a failure to reinstate the workers would irreparably harm the union; and the reinstatement would not harm the employer – Interim order granted

MARTIN BUILDING MAINTENANCE; RE LIUNA, LOCAL 1059 538

Employee – Certification – Status – The parties could not agree on whether certain employees were full-time or part-time – The employees in dispute ("Casual Maintenance Workers/ Operators – On Call") were paid for a minimum of twenty-five hours per week and were required to hold themselves available to the employer for those hours, albeit not at the workplace – The employer argued that these were part-time employees, relying on the Board's jurisprudence ("regularly employed for not more than twenty-fours hours" in four of the last seven weeks leading up to the application for certification) and asserting that the Board should consider "hours worked" as opposed to "hours paid" – The Board held that the disputed employees were required to demonstrate a full-time commitment to the employer and therefore should be included in the full-time bargaining unit – Count ordered

TWD ROADS MANAGEMENT INC.; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 .....

Employment Standards – Abandonment – Fraud – Settlement – The two directors agreed to settle the review of orders to pay with 4 of 7 claimants – Irwin paid his portion of the settlement; when Diena failed to make any of the promised payments, the claimants sought to rescind the settlement and reinstate the original Order on grounds of fraud – The Board found that the claimants were fraudulently induced to enter into the settlement because although Diena had the means to pay the settlement, it appears he had no intention to do so – Diena's failure to attend the hearing was further evidence of his lack of commitment to the settlement – The Board voided the settlement and reinstated the full Order to Pay, less monies already paid by Irwin – As for the other 3 claimants, since Diena failed to appear at the hearing, the Board considered his application against them to be abandoned

DANIEL DIENA, A DIRECTOR OF DELES INDUSTRIES LIMITED; RE MICHAEL J. ASHTON, ET AL AND DIRECTOR OF EMPLOYMENT STANDARDS 510

Employment Standards – Constitutional Law – The applicant sought review of an employment standards officer's refusal to issue an order to pay in circumstances where she alleged she was deprived of her position following a pregnancy leave – The Board first determined that the employer, a logistics company that coordinated international and interprovincial transportation of goods, was a provincial undertaking and subject to Ontario laws – On the substantive issue, the Board held that the legislation requires an employee returning from pregnancy leave to be returned to her original position (or if it no longer exists a comparable one), but not necessarily to all the duties and responsibilities that position entailed – The transfer of certain client accounts to other employees was not a penalty under the Act – Application dismissed

PINNACLE FREIGHT SPECIALISTS INC. AND DIRECTOR OF EMPLOYMENT STANDARDS; RE ARDELLE D. STONER 555

Employment Standards – Judicial Review – Practice and Procedure – The Applicant sought judicial review of a Board decision upholding an Officer's refusal to issue an order to pay outstanding wages to him – The Board had found that the Applicant was not an employee at the relevant time – On judicial review, the Court held that the Board was correct not to postpone its own proceedings until the Applicant's Tax Court matter on Employment Insurance eligibility was resolved – Employment Insurance proceedings have different statutory schemes, purposes, parties, and available remedies, so their results are inapplicable to *Employment Standards Act* proceedings – Based on the evidence, the Board had reasonably decided that the Applicant was not an employee – Alternatively, the Board had found that no wages were owed to the Applicant, because the Applicant had already been paid substantially more than the minimum wage – Since the Applicant had led no evidence of his actual wage rate, the Board's reliance on the minimum wage was reasonable – The Applicant also complained that the Board's decision was libellous, in that it contained negative assessments of his credibility – The Divisional Court held that Vice-Chairs of the Board are protected from libel and slander claims – Application for judicial review dismissed

DR. OLIVER BAJOR; RE ARBITRAGE RESEARCH AND TRADING LTD., MINISTRY OF LABOUR AND OLRB 594

Environmental Protection Act – Practice and Procedure – Reprisal – Timeliness – The employer argued that this reprisal application should be dismissed because it is precluded by the doctrines of issue estoppel and abuse of process, in addition to being untimely – The Board found that an arbitration panel in a grievance proceeding had fully considered the issues raised by the applicant in this reprisal complaint, even when the union had withdrawn the reprisal component of the grievance during final argument before the arbitration board – The Board also found that the application was untimely; rather than filing immediately after the impugned conduct, the applicant waited until the decision of the arbitration board to make his claim – Application dismissed

CITY OF OTTAWA; RE TED COOPER 507

Evidence – Construction Industry – Practice and Procedure – Related Employer – Sale of Business – Union sought to have admitted thirty year old documents as "business records," specifically a letter commenting on the binding nature of a collective agreement – The employer objected arguing that it was caught in an impossible position as it must find the author or another witness to give evidence about documents that apparently created some 30 years ago have played no role in the corporation's existence since that time – The Board found the records were not admissible pursuant to s. 35(2) of the

Evidence Act, in that the record did not meet any of the conditions set out in the subsection – The Board also found that even if s. 111(2)(c) of the *LRA, 1995* created a wider scope than s. 35, it would not admit the record because the documents are expressions of opinion by parties whose source of information and belief cannot be ascertained, and therefore no weight could be placed on them – Additionally, the Board applied the rule in *Browne v. Dunn* and did not admit evidence that contradicted earlier testimony by a witness where the contradiction was not put to the witness during cross examination – Matter continues

CADILLAC FAIRVIEW COROPORATION LTD., THE, CF/REALTY HOLDINGS INC., QUEENSTON ROAD INVESTMENT INC., EASTGATE SQUARE HOLDINGS INC. AND REDCLIFF REALTY MANAGEMENT INC.; RE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1795 491

Fraud – Abandonment – Employment Standards – Settlement – The two directors agreed to settle the review of orders to pay with 4 of 7 claimants – Irwin paid his portion of the settlement; when Diena failed to make any of the promised payments, the claimants sought to rescind the settlement and reinstate the original Order on grounds of fraud – The Board found that the claimants were fraudulently induced to enter into the settlement because although Diena had the means to pay the settlement, it appears he had no intention to do so – Diena's failure to attend the hearing was further evidence of his lack of commitment to the settlement – The Board voided the settlement and reinstated the full Order to Pay, less monies already paid by Irwin – As for the other 3 claimants, since Diena failed to appear at the hearing, the Board considered his application against them to be abandoned

DANIEL DIENA, A DIRECTOR OF DELES INDUSTRIES LIMITED; RE MICHAEL J. ASHTON, ET AL AND DIRECTOR OF EMPLOYMENT STANDARDS 510

Health and Safety – Practice and Procedure – Timeliness – After the inspector reviewed the applicant's complaint at the workplace, the applicant was advised there was no contravention of the Act – The inspector did not issue an Order – The inspector returned to the workplace three days later and provided the employer with a Field Visit report, but did not provide the complainant with the report – There is no provision in the Act requiring the inspector to confirm in writing the refusal to issue an order, nor requiring the inspector to provide the complainant with the Field Visit report until it is asked for – The applicant appealed to the Board within 30 days of having received the Field Visit report, but beyond the 30 days of the Inspector's decision not to issue an order – The Board found the appeal untimely – Appeal dismissed

CASTONGUAY BLASTING GP AND CLAUDE NADON, INSPECTOR; RE STEVEN MROCZYNSKI 504

Health and Safety – The Employer, supported by the union, sought suspension of an Order directing it to cease using a device that lifted workers on a platform some 45 feet to work on roofs, until a guard rail system that had been removed was repaired and certified to meet the manufacturer's specifications – The applicant asserted that the fall arrest system it required workers to use, together with its training provided protection at least equal to the protection afforded to workers by the guardrail – The Board found that if the removal of the guardrail system had not raised a concern about the stability of the platform, then the applicant would have demonstrated the fall arrest systems and its training and supervision were sufficient – The Board however found that the applicant had failed to provide any material from the manufacturer to indicate that the removal of the guard rail

on one side of the platform would not affect the integrity of the platform or its stability – The absence of such information together with the material filed by the inspector from the manufacturer that modifications should not occur without its consent, led the Board to conclude that the applicant had failed to demonstrate a strong *prima facie* case – Request to suspend dismissed

TRUDEL & SONS ROOFING LTD.; CARPENTERS AND ALLIED WORKERS, LOCAL 27, CJA; GORAN BLANUSA, INSPECTOR .....

Health and Safety – The inspector issued orders arising from the school board's refusal to permit a worker member, who was only present at the workplace in question one day a week, to act on the joint health and safety committee (JHSC) – The school board argued that members of the JHSC must have a significant, regular, principal connection to the workplace – The Board found that the Act did not require a worker to have such a connection to the workplace, but rather that he or she must only be employed at the workplace and selected by the workers – The Board declared that the school board's refusal to allow the worker to act on the JHSC was a breach of the Act

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE ONTARIO SECONDARY SCHOOL TEACHERS' FEDERATION, DISTRICT 9; CUPE, LOCALS 27 & 1348; ELEMENTARY TEACHERS' FEDERATION OF ONTARIO AND RICK TAGGART, INSPECTOR 514

Interim Order – Discharge – Unfair Labour Practice – The union sought interim reinstatement of five employees, pending resolution of the main application which alleged that they were discharged for union activity – The employees worked as cleaners in a plant under construction, and were dismissed when the construction was completed – The Board held that the employees appeared to have been dismissed for their earlier union activity, because there was no other reasonable explanation for their dismissal – Although the construction work was over, the employer by its own admission needed many cleaners to work in the finished plant, and these employees were already trained and gave no cause for dismissal – The Board held that the discharges occurred during an organizing campaign; there was a serious issue to be tried; a failure to reinstate the workers would irreparably harm the union; and the reinstatement would not harm the employer – Interim order granted

MARTIN BUILDING MAINTENANCE; RE LIUNA, LOCAL 1059 538

Judicial Review – Bar – Bargaining Unit – Certification – The employer argued on judicial review that the Board must determine whether a bar existed pursuant to s. 10(3), prior to counting the votes – The court held the Board was interpreting its enabling statute; that it addressed labour relations principles in its reasons, including consequences of delay and possible prejudice to both sides; and that the Board was exercising its specialized expertise – The court did not agree that the issue was a threshold jurisdictional issue, but rather a procedural and administrative order, the type the court "should be loath to interfere along the way with" – Application dismissed

STOCK TRANSPORTATION LTD.; RE OLRB AND TEAMSTERS LOCAL UNION NO. 938 601

Judicial Review – Certification – Representation Vote – Stay – A request for a stay of a Board decision ordering a vote count was dismissed in March 2008, with reasons to follow – The Court held that the first part of the test for a stay requires that the applicant establish

there is a strong *prima facie* case that the Board's decision is unreasonable, rather than that there was a serious issue to be tried – The applicant failed to pass this test, as well as the other criteria (irreparable harm; balance of convenience) – Stay application dismissed

EDGEWATER GARDENS LONG TERM CARE CENTRE; RE OPSEU AND OLRB.... 599

Judicial Review – Employment Standards – Practice and Procedure – The Applicant sought judicial review of a Board decision upholding an Officer's refusal to issue an order to pay outstanding wages to him – The Board had found that the Applicant was not an employee at the relevant time – On judicial review, the Court held that the Board was correct not to postpone its own proceedings until the Applicant's Tax Court matter on Employment Insurance eligibility was resolved – Employment Insurance proceedings have different statutory schemes, purposes, parties, and available remedies, so their results are inapplicable to *Employment Standards Act* proceedings – Based on the evidence, the Board had reasonably decided that the Applicant was not an employee – Alternatively, the Board had found that no wages were owed to the Applicant, because the Applicant had already been paid substantially more than the minimum wage – Since the Applicant had led no evidence of his actual wage rate, the Board's reliance on the minimum wage was reasonable – The Applicant also complained that the Board's decision was libellous, in that it contained negative assessments of his credibility – The Divisional Court held that Vice-Chairs of the Board are protected from libel and slander claims – Application for judicial review dismissed

DR. OLIVER BAJOR; RE ARBITRAGE RESEARCH AND TRADING LTD., MINISTRY OF LABOUR AND OLRB 594

Occupational Health and Safety Act – Construction Industry Grievance – The union grieved the failure of the responding party to pay employees for specific training in asbestos removal required by a Regulation under the *Occupational Health and Safety Act* – The Board found that the employer had arranged for the training and had directed the employees to attend the three-day course – Pursuant to the provisions of the Regulation as well as the collective agreement, the responding party was responsible for compensating its employees who attended the training – Owners are equally responsible as employers for compliance with the Regulation – Grievance allowed

HIGH POINT ENVIRONMENTAL INC./HPE ENVIRONMENTAL INC.; RE LIUNA, LOCAL 506..... 521

Parties – Construction Industry – Termination – Timeliness – The applicant sought to terminate the bargaining rights of LIUNA Local 607 – There was no dispute that the bargaining rights were held by LIUNA, Ontario Provincial District Council – The Board found that the OPDC must have been certified on the basis of the employees' membership in Local 607, since employees can only be members of locals, and not of the council – Local 607 conducted bargaining, drafted collective agreements, and made the application for the appointment of the conciliator – The Board held that given that the OPDC and Local 607 could agree on the transfer of bargaining rights, and given such a widespread practice once a certificate had been issued, it was not unreasonable for the applicant to assume that Local 607 was his bargaining agent – The style of cause was amended to include both Local 607 and the OPDC – On the issue of the timeliness of the application, the Board held that when the application was filed on the same day as a conciliation officer was appointed, the application was timely – Submissions ordered on status issues – Matter continues

A-1 SUPERIOR PAVING AND CONCRETE WORKS COMPANY INC.; RE DANIEL WILSON; RE LIUNA – CONSTRUCTION AND ALLIED WORKERS, LOCAL 607, AND LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 485

Practice and Procedure – Bargaining Unit – Certification – Union applied for an all employee unit where the employer had two operations: a nursing home and retirement home – Employer argued that only a two bargaining unit structure was appropriate – After the ballots were counted, a majority of employees in the nursing home voted in the union's favour, while the employees in the retirement home and all employee unit were against the union – The parties then adopted each others' positions – The Board permitted the change of positions, following *Martha's Garden* and *Morrow Transport* and noted that change of position cases are rare and are a natural outcome of the Board's processes which are designed to ensure that certification cases get dealt with quickly, effectively and without the requirement of unnecessary litigation – Finally, the Board found that a two-unit structure was appropriate (particularly given that the employer had argued, albeit at different times, that both an all employee and a two unit structure were appropriate) – Application granted, in part

NUTRA SERVICES INC.; RE SEIU LOCAL 1 CANADA 550

Practice and Procedure – Certification – Construction Industry – Remedial Certification – The union filed an application for certification with less than 40% membership and applied for remedial certification under s. 11 – In its application the applicant failed to identify which certification regime (s. 8 or 128.1) it was choosing – The responding party argued this was fatal – The Board found, based on statements made elsewhere in the application that the applicant had elected to proceed under s. 8 – Additionally, the Board noted that s. 128.1 specifically requires an election and since the applicant had not elected s. 128.1, the application must be dealt with under s. 8 – Matter continues

ASHBRIDGE ELECTRIC CONTRACTORS LIMITED; RE IBEW, LOCAL 353 489

Practice and Procedure – Construction Industry – Evidence – Related Employer – Sale of Business – Union sought to have admitted thirty year old documents as "business records," specifically a letter commenting on the binding nature of a collective agreement – The employer objected arguing that it was caught in an impossible position as it must find the author or another witness to give evidence about documents that apparently created some 30 years ago have played no role in the corporation's existence since that time – The Board found the records were not admissible pursuant to s. 35(2) of the *Evidence Act*, in that the record did not meet any of the conditions set out in the subsection – The Board also found that even if s. 111(2)(c) of the *LRA, 1995* created a wider scope than s. 35, it would not admit the record because the documents are expressions of opinion by parties whose source of information and belief cannot be ascertained, and therefore no weight could be placed on them – Additionally, the Board applied the rule in *Browne v. Dunn* and did not admit evidence that contradicted earlier testimony by a witness where the contradiction was not put to the witness during cross examination – Matter continues

CADILLAC FAIRVIEW COROPORATION LTD., THE, CF/REALTY HOLDINGS INC., QUEENSTON ROAD INVESTMENT INC., EASTGATE SQUARE HOLDINGS INC. AND REDCLIFF REALTY MANAGEMENT INC.; RE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1795 491

Practice and Procedure – Construction Industry Grievance – Reconsideration – Settlement – The applicant sought reconsideration of a default award because the parties failed to advise the Board of a settlement they had reached prior to the issuance of the default decision – The applicant had originally sought a default decision if the responding party did not file an Intent to Defend, and no such filing occurred – The Board reconsidered its decision but admonished the parties for failing to advise the Board of their settlement, causing the Board to expend time and resources to review a file and issue an unnecessary decision – Reconsideration granted; application withdrawn

NORTH ROCK GROUP LTD.; RE UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 548

Practice and Procedure – Construction Industry Grievance – The applicant failed to file and deliver its grievance referral to the responding party in accordance with s. 133 and Rule 34.2 [due to inadvertence in the solicitor's office, it was filed with the Board before being delivered to the employer] – The Board found it had the discretion under s. 133(4) to accept the referral, and, in these circumstances, did so, while also extending the time for the employer to respond – Grievance continues

VISTA SUDBURY HOTEL; RE LIUNA, LOCAL 493 591

Practice and Procedure – Employment Standards – Judicial Review – The Applicant sought judicial review of a Board decision upholding an Officer's refusal to issue an order to pay outstanding wages to him – The Board had found that the Applicant was not an employee at the relevant time – On judicial review, the Court held that the Board was correct not to postpone its own proceedings until the Applicant's Tax Court matter on Employment Insurance eligibility was resolved – Employment Insurance proceedings have different statutory schemes, purposes, parties, and available remedies, so their results are inapplicable to *Employment Standards Act* proceedings – Based on the evidence, the Board had reasonably decided that the Applicant was not an employee – Alternatively, the Board had found that no wages were owed to the Applicant, because the Applicant had already been paid substantially more than the minimum wage – Since the Applicant had led no evidence of his actual wage rate, the Board's reliance on the minimum wage was reasonable – The Applicant also complained that the Board's decision was libellous, in that it contained negative assessments of his credibility – The Divisional Court held that Vice-Chairs of the Board are protected from libel and slander claims – Application for judicial review dismissed

DR. OLIVER BAJOR; RE ARBITRAGE RESEARCH AND TRADING LTD., MINISTRY OF LABOUR AND OLRB 594

Practice and Procedure – *Environmental Protection Act* – Reprisal – Timeliness – The employer argued that this reprisal application should be dismissed because it is precluded by the doctrines of issue estoppel and abuse of process, in addition to being untimely – The Board found that an arbitration panel in a grievance proceeding had fully considered the issues raised by the applicant in this reprisal complaint, even when the union had withdrawn the reprisal component of the grievance during final argument before the arbitration board – The Board also found that the application was untimely; rather than filing immediately after the impugned conduct, the applicant waited until the decision of the arbitration board to make his claim – Application dismissed

CITY OF OTTAWA; RE TED COOPER 507

Practice and Procedure – Health and Safety – Timeliness – After the inspector reviewed the applicant's complaint at the workplace, the applicant was advised there was no contravention of the Act – The inspector did not issue an Order – The inspector returned to the workplace three days later and provided the employer with a Field Visit report, but did not provide the complainant with the report – There is no provision in the Act requiring the inspector to confirm in writing the refusal to issue an order, nor requiring the inspector to provide the complainant with the Field Visit report until it is asked for – The applicant appealed to the Board within 30 days of having received the Field Visit report, but beyond the 30 days of the Inspector's decision not to issue an order – The Board found the appeal untimely – Appeal dismissed

CASTONGUAY BLASTING GP AND CLAUDE NADON, INSPECTOR; RE STEVEN MROCZYNSKI 504

Practice and Procedure – Ratification and Strike Vote – Strike – The union, acting in error (not in bad faith) advised ten employees that they must sign union cards to be eligible to vote for strike action – The Board found as a fact that there were 53 employees in the bargaining unit, 43 of whom voted with 28 voting in favour of strike action – The Board noted that a clear majority of employees voted in favour of strike action, and that while the union may have breached its obligations under s. 79 for the conduct of strike votes and while some remedy might lie against the union for this conduct, there was no challenge to the validity of those 28 ballots cast in support of strike action – The Board found that no labour relations purpose would be served by declaring any ensuing strike to be unlawful where a majority of employees in the bargaining unit have signalled their support and to preclude such action on these facts would undermine the essential role to be played by strike (or lockout) in the collective bargaining process – Application dismissed

CANADIAN CORPS OF COMMISSIONAIRES (OTTAWA DIVISION); PUBLIC SERVICE ALLIANCE OF CANADA..... 500

Prima Facie Motion – Bargaining Unit – Certification – Reconsideration – The union applied to consolidate six bargaining units into three – The employer brought a "no *prima facie* case" motion – The Board has the power to reconsider its past decisions, including certification decisions providing bargaining unit descriptions – However, certificates are spent when the parties enter into their first collective agreement – The bargaining units negotiated by the parties supersede the ones described in the Board's certificates – Hence the current bargaining units, as described in the collective agreements negotiated between the parties, supersede any consolidated units that the Board could order through its reconsideration power – The union has not made out a *prima facie* case for consolidating its bargaining units, which was the relief sought – Motion granted; application dismissed

KINGSTON WHIG STANDARD; RE KINGSTON TYPOGRAPHICAL UNION, LOCAL 30204..... 529

Ratification and Strike Vote – Practice and Procedure – Strike – The union, acting in error (not in bad faith) advised ten employees that they must sign union cards to be eligible to vote for strike action – The Board found as a fact that there were 53 employees in the bargaining unit, 43 of whom voted with 28 voting in favour of strike action – The Board noted that a clear majority of employees voted in favour of strike action, and that while the union may have breached its obligations under s. 79 for the conduct of strike votes and while some remedy might lie against the union for this conduct, there was no challenge to the validity of those 28 ballots cast in support of strike action – The Board

found that no labour relations purpose would be served by declaring any ensuing strike to be unlawful where a majority of employees in the bargaining unit have signalled their support and to preclude such action on these facts would undermine the essential role to be played by strike (or lockout) in the collective bargaining process – Application dismissed

CANADIAN CORPS OF COMMISSIONAIRES (OTTAWA DIVISION); PUBLIC SERVICE ALLIANCE OF CANADA 500

Reconsideration – Bargaining Unit – Certification – *Prima Facie* Motion – The union applied to consolidate six bargaining units into three – The employer brought a "no *prima facie* case" motion – The Board has the power to reconsider its past decisions, including certification decisions providing bargaining unit descriptions – However, certificates are spent when the parties enter into their first collective agreement – The bargaining units negotiated by the parties supersede the ones described in the Board's certificates – Hence the current bargaining units, as described in the collective agreements negotiated between the parties, supersede any consolidated units that the Board could order through its reconsideration power – The union has not made out a *prima facie* case for consolidating its bargaining units, which was the relief sought – Motion granted; application dismissed

KINGSTON WHIG STANDARD; RE KINGSTON TYPOGRAPHICAL UNION, LOCAL 30204 529

Reconsideration – Construction Industry Grievance – Practice and Procedure – Settlement – The applicant sought reconsideration of a default award because the parties failed to advise the Board of a settlement they had reached prior to the issuance of the default decision – The applicant had originally sought a default decision if the responding party did not file an Intent to Defend, and no such filing occurred – The Board reconsidered its decision but admonished the parties for failing to advise the Board of their settlement, causing the Board to expend time and resources to review a file and issue an unnecessary decision – Reconsideration granted; application withdrawn

NORTH ROCK GROUP LTD.; RE UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 548

Related Employer – Construction Industry – Evidence – Practice and Procedure – Sale of Business – Union sought to have admitted thirty year old documents as "business records," specifically a letter commenting on the binding nature of a collective agreement – The employer objected arguing that it was caught in an impossible position as it must find the author or another witness to give evidence about documents that apparently created some 30 years ago have played no role in the corporation's existence since that time – The Board found the records were not admissible pursuant to s. 35(2) of the *Evidence Act*, in that the record did not meet any of the conditions set out in the subsection – The Board also found that even if s. 111(2)(c) of the *LRA, 1995* created a wider scope than s. 35, it would not admit the record because the documents are expressions of opinion by parties whose source of information and belief cannot be ascertained, and therefore no weight could be placed on them – Additionally, the Board applied the rule in *Browne v. Dunn* and did not admit evidence that contradicted earlier testimony by a witness where the contradiction was not put to the witness during cross examination – Matter continues

CADILLAC FAIRVIEW COROPORATION LTD., THE, CF/REALTY HOLDINGS INC., QUEENSTON ROAD INVESTMENT INC., EASTGATE SQUARE HOLDINGS

INC. AND REDCLIFF REALTY MANAGEMENT INC.; RE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1795 491

Remedial Certification – Certification – Construction Industry – Practice and Procedure – The union filed an application for certification with less than 40% membership and applied for remedial certification under s. 11 – In its application the applicant failed to identify which certification regime (s. 8 or 128.1) it was choosing – The responding party argued this was fatal – The Board found, based on statements made elsewhere in the application that the applicant had elected to proceed under s. 8 – Additionally, the Board noted that s. 128.1 specifically requires an election and since the applicant had not elected s. 128.1, the application must be dealt with under s. 8 – Matter continues

ASHBRIDGE ELECTRIC CONTRACTORS LIMITED; RE IBEW, LOCAL 353 489

Representation Vote – Certification – Judicial Review – Stay – A request for a stay of a Board decision ordering a vote count was dismissed in March 2008, with reasons to follow – The Court held that the first part of the test for a stay requires that the applicant establish there is a strong *prima facie* case that the Board's decision is unreasonable, rather than that there was a serious issue to be tried – The applicant failed to pass this test, as well as the other criteria (irreparable harm; balance of convenience) – Stay application dismissed

EDGEWATER GARDENS LONG TERM CARE CENTRE; RE OPSEU AND OLRB.... 599

Reprisal – *Environmental Protection Act* – Practice and Procedure – Timeliness – The employer argued that this reprisal application should be dismissed because it is precluded by the doctrines of issue estoppel and abuse of process, in addition to being untimely – The Board found that an arbitration panel in a grievance proceeding had fully considered the issues raised by the applicant in this reprisal complaint, even when the union had withdrawn the reprisal component of the grievance during final argument before the arbitration board – The Board also found that the application was untimely; rather than filing immediately after the impugned conduct, the applicant waited until the decision of the arbitration board to make his claim – Application dismissed

CITY OF OTTAWA; RE TED COOPER 507

Sale of Business – Construction Industry – Evidence – Practice and Procedure – Related Employer – Union sought to have admitted thirty year old documents as "business records," specifically a letter commenting on the binding nature of a collective agreement – The employer objected arguing that it was caught in an impossible position as it must find the author or another witness to give evidence about documents that apparently created some 30 years ago have played no role in the corporation's existence since that time – The Board found the records were not admissible pursuant to s. 35(2) of the *Evidence Act*, in that the record did not meet any of the conditions set out in the subsection – The Board also found that even if s. 111(2)(c) of the *LRA, 1995* created a wider scope than s. 35, it would not admit the record because the documents are expressions of opinion by parties whose source of information and belief cannot be ascertained, and therefore no weight could be placed on them – Additionally, the Board applied the rule in *Browne v. Dunn* and did not admit evidence that contradicted earlier testimony by a witness where the contradiction was not put to the witness during cross examination – Matter continues

CADILLAC FAIRVIEW COROPORATION LTD., THE, CF/REALTY HOLDINGS INC., QUEENSTON ROAD INVESTMENT INC., EASTGATE SQUARE HOLDINGS

INC. AND REDCLIFF REALTY MANAGEMENT INC.; RE INTERNATIONAL UNION OF PAINTERS AND ALLIED TRADES, LOCAL 1795 491

Settlement – Abandonment – Employment Standards – Fraud – The two directors agreed to settle the review of orders to pay with 4 of 7 claimants – Irwin paid his portion of the settlement; when Diena failed to make any of the promised payments, the claimants sought to rescind the settlement and reinstate the original Order on grounds of fraud – The Board found that the claimants were fraudulently induced to enter into the settlement because although Diena had the means to pay the settlement, it appears he had no intention to do so – Diena's failure to attend the hearing was further evidence of his lack of commitment to the settlement – The Board voided the settlement and reinstated the full Order to Pay, less monies already paid by Irwin – As for the other 3 claimants, since Diena failed to appear at the hearing, the Board considered his application against them to be abandoned

DANIEL DIENA, A DIRECTOR OF DELES INDUSTRIES LIMITED; RE MICHAEL J. ASHTON, ET AL AND DIRECTOR OF EMPLOYMENT STANDARDS 510

Settlement – Construction Industry Grievance – Practice and Procedure – Reconsideration – The applicant sought reconsideration of a default award because the parties failed to advise the Board of a settlement they had reached prior to the issuance of the default decision – The applicant had originally sought a default decision if the responding party did not file an Intent to Defend, and no such filing occurred – The Board reconsidered its decision but admonished the parties for failing to advise the Board of their settlement, causing the Board to expend time and resources to review a file and issue an unnecessary decision – Reconsideration granted; application withdrawn

NORTH ROCK GROUP LTD.; RE UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183 548

Status – Certification – Employee – The parties could not agree on whether certain employees were full-time or part-time – The employees in dispute ("Casual Maintenance Workers/ Operators – On Call") were paid for a minimum of twenty-five hours per week and were required to hold themselves available to the employer for those hours, albeit not at the workplace – The employer argued that these were part-time employees, relying on the Board's jurisprudence ("regularly employed for not more than twenty-fours hours" in four of the last seven weeks leading up to the application for certification) and asserting that the Board should consider "hours worked" as opposed to "hours paid" – The Board held that the disputed employees were required to demonstrate a full-time commitment to the employer and therefore should be included in the full-time bargaining unit – Count ordered

TWD ROADS MANAGEMENT INC.; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793 .....

Stay – Certification – Judicial Review – Representation Vote – A request for a stay of a Board decision ordering a vote count was dismissed in March 2008, with reasons to follow – The Court held that the first part of the test for a stay requires that the applicant establish there is a strong *prima facie* case that the Board's decision is unreasonable, rather than that there was a serious issue to be tried – The applicant failed to pass this test, as well as the other criteria (irreparable harm; balance of convenience) – Stay application dismissed

EDGEWATER GARDENS LONG TERM CARE CENTRE; RE OPSEU AND OLRB.... 5

Strike – Practice and Procedure – Ratification and Strike Vote – The union, acting in error (not in bad faith) advised ten employees that they must sign union cards to be eligible to vote for strike action – The Board found as a fact that there were 53 employees in the bargaining unit, 43 of whom voted with 28 voting in favour of strike action – The Board noted that a clear majority of employees voted in favour of strike action, and that while the union may have breached its obligations under s. 79 for the conduct of strike votes and while some remedy might lie against the union for this conduct, there was no challenge to the validity of those 28 ballots cast in support of strike action – The Board found that no labour relations purpose would be served by declaring any ensuing strike to be unlawful where a majority of employees in the bargaining unit have signalled their support and to preclude such action on these facts would undermine the essential role to be played by strike (or lockout) in the collective bargaining process – Application dismissed

CANADIAN CORPS OF COMMISSIONAIRES (OTTAWA DIVISION); PUBLIC SERVICE ALLIANCE OF CANADA 500

Termination – Constitutional Law – Bargaining Rights – An employee in the construction industry applied for termination of bargaining rights – The union argued that on the application date, the applicant's work was within federal jurisdiction – The applicant was installing sensors to monitor temperature and humidity in computerized offices used by a federal intelligence/security agency, a core federal undertaking – The removal of labour relations from provincial competence is exceptional, and is only appropriate when the subsidiary's work is integral to a core federal undertaking – The Board held that the sensor system was not integral to the core federal undertaking – The construction employer did no work that was directly or indirectly related to the agency's federal purposes in intelligence and security – Therefore, the employer's labour relations were governed by the *Labour Relations Act* and by the Board – Matter continues

RÉGULVAR CANADA INC./RÉGULVAR INC.; RE CHRISTIAN BOURGEOIS; RE THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 586 563

Termination – Construction Industry – Parties – Timeliness – The applicant sought to terminate the bargaining rights of LIUNA Local 607 – There was no dispute that the bargaining rights were held by LIUNA, Ontario Provincial District Council – The Board found that the OPDC must have been certified on the basis of the employees' membership in Local 607, since employees can only be members of locals, and not of the council – Local 607 conducted bargaining, drafted collective agreements, and made the application for the appointment of the conciliator – The Board held that given that the OPDC and Local 607 could agree on the transfer of bargaining rights, and given such a widespread practice once a certificate had been issued, it was not unreasonable for the applicant to assume that Local 607 was his bargaining agent – The style of cause was amended to include both Local 607 and the OPDC – On the issue of the timeliness of the application, the Board held that when the application was filed on the same day as a conciliation officer was appointed, the application was timely – Submissions ordered on status issues – Matter continues

A-1 SUPERIOR PAVING AND CONCRETE WORKS COMPANY INC.; RE DANIEL WILSON; RE LIUNA – CONSTRUCTION AND ALLIED WORKERS, LOCAL 607, AND LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 485

Timeliness – Construction Industry – Parties – Termination – The applicant sought to terminate the bargaining rights of LIUNA Local 607 – There was no dispute that the bargaining rights were held by LIUNA, Ontario Provincial District Council – The Board found that the OPDC must have been certified on the basis of the employees' membership in Local 607, since employees can only be members of locals, and not of the council – Local 607 conducted bargaining, drafted collective agreements, and made the application for the appointment of the conciliator – The Board held that given that the OPDC and Local 607 could agree on the transfer of bargaining rights, and given such a widespread practice once a certificate had been issued, it was not unreasonable for the applicant to assume that Local 607 was his bargaining agent – The style of cause was amended to include both Local 607 and the OPDC – On the issue of the timeliness of the application, the Board held that when the application was filed on the same day as a conciliation officer was appointed, the application was timely – Submissions ordered on status issues – Matter continues

A-1 SUPERIOR PAVING AND CONCRETE WORKS COMPANY INC.; RE DANIEL WILSON; RE LIUNA – CONSTRUCTION AND ALLIED WORKERS, LOCAL 607, AND LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL 485

Timeliness – *Environmental Protection Act* – Practice and Procedure – Reprisal – The employer argued that this reprisal application should be dismissed because it is precluded by the doctrines of issue estoppel and abuse of process, in addition to being untimely – The Board found that an arbitration panel in a grievance proceeding had fully considered the issues raised by the applicant in this reprisal complaint, even when the union had withdrawn the reprisal component of the grievance during final argument before the arbitration board – The Board also found that the application was untimely; rather than filing immediately after the impugned conduct, the applicant waited until the decision of the arbitration board to make his claim – Application dismissed

CITY OF OTTAWA; RE TED COOPER 507

Timeliness – Health and Safety – Practice and Procedure – After the inspector reviewed the applicant's complaint at the workplace, the applicant was advised there was no contravention of the Act – The inspector did not issue an Order – The inspector returned to the workplace three days later and provided the employer with a Field Visit report, but did not provide the complainant with the report – There is no provision in the Act requiring the inspector to confirm in writing the refusal to issue an order, nor requiring the inspector to provide the complainant with the Field Visit report until it is asked for – The applicant appealed to the Board within 30 days of having received the Field Visit report, but beyond the 30 days of the Inspector's decision not to issue an order – The Board found the appeal untimely – Appeal dismissed

CASTONGUAY BLASTING GP AND CLAUDE NADON, INSPECTOR; RE STEVEN MROCZYNSKI 504

Unfair Labour Practice – Discharge – Interim Order – The union sought interim reinstatement of five employees, pending resolution of the main application which alleged that they were discharged for union activity – The employees worked as cleaners in a plant under construction, and were dismissed when the construction was completed – The Board held that the employees appeared to have been dismissed for their earlier union activity, because there was no other reasonable explanation for their dismissal – Although the construction work was over, the employer by its own admission needed many cleaners to work in the finished plant, and these employees were already trained and gave no cause

for dismissal – The Board held that the discharges occurred during an organizing campaign; there was a serious issue to be tried; a failure to reinstate the workers would irreparably harm the union; and the reinstatement would not harm the employer – Interim order granted

MARTIN BUILDING MAINTENANCE; RE LIUNA, LOCAL 1059 538

0634-08-R Daniel Wilson, Applicant v. Labourers' International Union of North America – Construction and Allied Workers, Local 607, and Labourers' International Union of North America, Ontario Provincial District Council, Responding Parties v. **A-1 Superior Paving and Concrete Works Company Inc.**, Employer

Construction Industry – Parties – Termination – Timeliness – The applicant sought to terminate the bargaining rights of LIUNA Local 607 – There was no dispute that the bargaining rights were held by LIUNA, Ontario Provincial District Council – The Board found that the OPDC must have been certified on the basis of the employees' membership in Local 607, since employees can only be members of locals, and not of the council – Local 607 conducted bargaining, drafted collective agreements, and made the application for the appointment of the conciliator – The Board held that given that the OPDC and Local 607 could agree on the transfer of bargaining rights, and given such a widespread practice once a certificate had been issued, it was not unreasonable for the applicant to assume that Local 607 was his bargaining agent – The style of cause was amended to include both Local 607 and the OPDC – On the issue of the timeliness of the application, the Board held that when the application was filed on the same day as a conciliation officer was appointed, the application was timely – Submissions ordered on status issues – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

DECISION OF THE BOARD: July 16, 2008

1. This is an application seeking to terminate bargaining rights pursuant to sections 63 and 132 of the *Labour Relations Act, 1995*, S.O. 1995, ch. 1, as amended (the "Act"). Following a Regional Certification Meeting, the Union parties to this application have made submissions about the issue of the proper parties to the application and, once again, the timeliness of the application. There is no dispute that the party that holds bargaining rights is the Labourers International Union of North America, Ontario Provincial District Council ("OPDC"). The applicant originally named Labourers International Union of North America, Local 607 ("Local 607") as the responding party. I am able to deal with the issue that the parties have argued. Given the result I come to, the style of cause is amended to include the OPDC as a responding party.

2. No submissions have been received, despite the Board's Information Bulletin #10, about the challenges to the persons who cast ballots in the representation vote. That matter must be addressed as well.

Timeliness

3. The issue with respect to the timeliness of the application has already been decided in the decision of May 27, 2008. The responding party trade unions assert that the application is untimely. I found that it was timely. The appointment of a conciliation officer took place on the same day as the application was filed. The termination application was timely and could have been made at any time after 12:01 a.m. on May 22, 2008. The appointment of a conciliation officer does not make the application untimely retroactively to whatever time of day the termination application was or might have been filed, see: *Romac Heating*, [2002] OLRB Rep. Nov./Dec. 1162 at paragraph 13.

4. The reality is that both the application for termination and the appointment of a conciliation officer were timely on May 22, 2008. For the reasons set out in *Romac Heating, supra*, the Board will not subdivide a day to give a temporal priority to the event first occurring (even assuming one could determine the time of day when the Minister issued the appointment of a conciliation officer). The Act gives a priority to competing applications only in the case of a termination application and an application for first contract arbitration (subsection 43(23.2)) or gives the Board the ability to determine priorities in competing applications for certification under subsection 111(3). In the absence of such a statutory provision, both events, the appointment of a conciliation officer and the application for termination, are timely and effective as of the day they are made.

The proper responding party to this application

5. The representation vote was ordered on the basis that the statement filed with the application indicated a desire on the part of the employees to terminate at least the bargaining rights of Local 607. The ballot referred to the OPDC and Local 607 at the request of the applicant.

6. The applicant has asked that the name of the responding party be amended to both Local 607 and the OPDC. The OPDC and Local 607 argue that the Board may amend the name of a party to correct an error in that party's name, but may not amend the application to add an entirely new party to the application. Such arguments are regularly rejected by the Board when made by employers responding to an application for certification when a trade union such as the applicant names an employer in such a manner that the name of the responding party and the name of the employer are not remotely similar, or in fact the union names the wrong party on the site. Provided that the relevant party is aware of the real nature of the application and of the fact that it is the entity that the union seeks to engage in the application, the Board regularly amends the name of a responding party in an application for certification, even where that results in the naming of a different legal entity.

7. The more serious argument by the OPDC is best set out in the following passage:

> The OPDC maintains that the failure to name the union that holds bargaining rights in the evidence of the employees' wishes not to be represented by a trade union is an incurable error. Section 63(4) of the Act states that an application for termination "shall be accompanied by a list of the names of the employees in the bargaining unit who have expressed a wish not to be represented by the trade union and evidence of the wishes of those employees". Section 63 adds that the Board shall order a vote if it determines that "forty per percent (40%) or more of the employees in the bargaining unit appear to have expressed a wish not to be represented by the trade union". These sections supplement section 132 of the Act. They do not conflict with section 132. Accordingly, the OPDC maintains that the Applicant was obliged to comply with s. 63(4). Given that the Applicant failed to file evidence that relates to the OPDC, there is *no evidence* before the Board that the employees do not wish to be represented by the OPDC and the OLRB cannot reasonably conclude that there is an appearance of forty per cent support for the application.

Facts

8. The facts that are relevant to this determination are as follows.

9. Local 607 is an affiliated local union of the OPDC. When a council of trade unions is certified in its own name, it holds the bargaining rights, not the local union, unless the council transfers those bargaining rights to the local or the council is dissolved. Such transfers of bargaining rights to a local union are not uncommon in any industry. In addition, the OPDC has a province-wide jurisdiction and bargains the Provincial Collective Agreement and other provincial agreements. Local 607 has a local jurisdiction limited to the northwestern part of the province and bargains local collective agreements. The certificate was issued in respect of Board Area 22, the Thunder Bay area.

10. The OPDC was certified in Board File No. 2152-07-R. I assume that this was on the basis of membership in Local 607, since of course an employee may not be a member of a council of trade unions, only a trade union can. Therefore the membership must be in the name of an affiliated local union of the Council. Even if there was a change in the membership of the bargaining unit, that information would be known to those employed at the time of the application. The Board's decision, reflecting an agreement of the parties and identifying the union as the OPDC, should have been posted after that certificate was issued. However, bargaining was conducted thereafter by Local 607. It produced draft collective agreements for the employer in the name of Local 607. Local 607 made an application for the appointment of a conciliation officer in respect of that bargaining.

11. The Minister denied that request on the basis that the application was made in the name of Local 607 rather than the name of the OPDC, the party named in the certificate. The same people then made the application in the name of the OPDC.

Analysis

12. Subsections 63(1), (4) and (5) provide in part:

> **63.** (1) If a trade union does not make a collective agreement with the employer within one year after its certification, ...
>
> (4) The application filed with the Board shall be accompanied by a list of the names of the employees in the bargaining unit who have expressed a wish not to be represented by the trade union.
>
> (5) If the Board determines that 40 per cent or more of the employees in the bargaining unit appear to have expressed a wish not to be represented by the trade union....

The focus in these sections is on a trade union that is bargaining a collective agreement, and has for whatever reason, been unable to do so. The question is whether the statement of a wish to terminate filed with this application is evidence of a desire not to be represented by the trade union that holds bargaining rights, the OPDC. That is, what is the wish of the employees in the bargaining unit?

13. Employees in the bargaining unit signed, or may have been aware that others signed, membership applications in Local 607. I assume that Local 607 made some effort to advise employees in the bargaining unit what it was doing in bargaining on their behalf. Given that the OPDC and Local 607 could agree to such a transfer, and given the practice of many unions to transfer bargaining rights to a local union once a certificate has been granted, it was not unreasonable for the employees in the bargaining unit to assume that Local 607 was bargaining on their behalf and was lawfully entitled to do so. The employees in the bargaining unit decided, for whatever reason, that

they no longer wished to be represented in bargaining by the party that seemed to be doing so on their behalf. It was reasonable to conclude that this party was Local 607.

14. Indeed, the Union appears to have been operating under the same belief. Local 607 applied for conciliation in its own name. There is no evidence that there was any transfer of bargaining rights to Local 607, but the belief that Local 607 was in possession of the bargaining rights in question was as strongly held by Local 607 as it was by the applicants in this case. The Board is hardly going to hold the applicants to a higher standard of perceptivity about matters internal to the trade union, than the union itself has.

15. Local 607 behaved as if it were the possessor of the bargaining rights or was acting as agent, purporting to deal with the bargaining rights as if they were theirs to deal with as they chose without reference to the OPDC. When the employees named Local 607 in the statement of desire, it was aimed at the party that was bargaining on their behalf.

16. Therefore I conclude that the statement of desire submitted with the application is, in the words of subsection 63(5), evidence that more than forty per cent of the employees in the bargaining unit appear to have expressed a wish not to be represented in bargaining by the trade union with the legal authority to bargain on their behalf. Such appearance is very strongly present on these facts.

17. For these reasons, I conclude that the application should be amended to include the OPDC as the responding party to this application, and that the statements filed by the applicant are evidence of a wish on the part of more than 40% of the members of the bargaining unit that they no longer be represented in bargaining by either Local 607 or the OPDC.

Employee status disputes

18. Notwithstanding Part III (b) of the Information Bulletin #10, the parties have not made their submissions on status following the Regional Certification Meeting. The Union has challenged the status of all five persons who voted on the basis that (i) they were not at work on the application date and (ii) they were not performing work in the bargaining unit on the application date.

19. The employer is directed to provide to the Board, the applicant, Local 607 and the OPDC copies of all time sheets, records, pay cheques, payroll information, job site records, progress reports made to customers and any other document that indicates what employees were doing during the three-week period prior to the application date. These documents must be delivered on or before August 1, 2008.

20. Following that, the OPDC and Local 607 are required to file submissions setting out:

(i) in the case of employees whom they allege were not at work on the application date, what in the employer's records demonstrates this fact or what is not accurate about the employer's records; and

(ii) in the case of the employees who were at work, what work were they doing on the application date that takes them out of the bargaining unit? If the Unions take the position that an employee was not at work on the application

date, but wishes to maintain an alternative position, the same requirement applies.

21. These submissions must be filed on or before August 21, 2008.

1376-08-R; 1275-08-U International Brotherhood of Electrical Workers, Local 353, Applicant v. **Ashbridge Electric Contractors Limited and Polycon Electric Contractors Limited**, Responding Parties; International Brotherhood of Electrical Workers, Local 353, Applicant v. Ashbridge Electric Contractors Limited, Polycon Electric Contractors Limited and Alex Ferrandini Responding Parties

Certification – Construction Industry – Practice and Procedure – Remedial Certification – The union filed an application for certification with less than 40% membership and applied for remedial certification under s. 11 – In its application the applicant failed to identify which certification regime (s. 8 or 128.1) it was choosing – The responding party argued this was fatal – The Board found, based on statements made elsewhere in the application that the applicant had elected to proceed under s. 8 – Additionally, the Board noted that s. 128.1 specifically requires an election and since the applicant had not elected s. 128.1, the application must be dealt with under s. 8 – Matter continues

BEFORE: *Mark J. Lewis*, Vice-Chair.

DECISION OF THE BOARD: August 8, 2008

1. Board File No. 1376-08-R is an application for certification brought pursuant to the construction industry provisions of the *Labour Relations Act, 1995*, S.O. 1995 Ch. 1 (the "Act").

2. In the response to this application for certification, the responding parties states the following:

> The Responding Parties submits that the Application is fatally flawed and should be dismissed outright by the Board. In the Form A-71 I the Applicant has specifically not exercised its election as required by 128.1 of the *Labour Relations Act 1995* and as required on the Board's form A-7 1. The Applicant asserts that it is failing to do so because of alleged unfair labour practices (which are denied by the Responding Parties and which are answered fully in the Response in Board file 1275-08-U flied today).
>
> However, in structuring its Application in this manner the Applicant has failed to meet the requirements of Section 128.1 of the Act which directs that an election be made (under Section 128.1(1)) and state; at Section 128.1(2) that notice of the election "shall" be provided to the Board when the Application is filed and to the employer when the Application is delivered.
>
> In the instant matter the Applicant has failed to make any election and has also, therefore, failed to give notice of the election. Based on this failure the

> instant Application and the manner in which it has been filed does not meet the requirements of the Act and is therefore fatally flawed.
>
> Accordingly, and based on the foregoing, the Responding Parties submit that the Application for Certification should be dismissed outright by the Board without a vote and without any further action.

3. With respect, the Board disagrees with the responding parties' positions and hereby finds that this is an application brought pursuant to section 8 of the Act. While it is true that the applicant did not *check* either the section 8 or the section 128.1 box of the Form A-71 Application for Certification, Vote-based (s.8) or Card-based (s. 128.1), Construction Industry, the Board is satisfied, based on the statements of the applicant set out elsewhere in this application and the documents which it filed together with this application, that the applicant has in fact *elected* to have this application dealt with under section 8 of the Act.

4. Further, and in any event, the Board does not, in these circumstances at least, agree with the responding parties suggested interpretation of the Act. Sections 128.1(1) and (2) of the Act states:

> **128.1** (1) A trade union applying for certification as bargaining agent of the employees of an employer **may elect** to have its application dealt with under this section rather than under section 8.
>
> (2) The trade union shall give written notice of the election,
>
> (a) to the Board, on the date the trade union files the application; and
>
> (b) to the employer, on the date the trade union delivers a copy of the application to the employer.
>
> (c)
>
> [emphasis added]

Therefore, under the Act a trade union *may elect* to have its application dealt with under section 128.1, rather than section 8, and if it does so elect it must given written notice of that election. However, the Act does not require a trade union to make an election, or to provide notice, if it wishes to have its application dealt with pursuant to section 8 of the Act. Accordingly, if, as the responding parties claims is the case here, a trade union chooses to make no election its application is then automatically dealt with pursuant to section 8 of the Act.

5. Section 8 requires a determination of the application for certification by a representation vote among the employees in the bargaining unit, provided the applicant union has demonstrated the appearance of membership support from at least 40% of the bargaining unit.

6. In this case, the applicant frankly acknowledges that it does not have that level of support. It says that it does not have that support as a result of the responding parties' interference with its organizing campaign and their improper actions towards members of the bargaining unit. It has filed an application under section 96 of the Act, Board File No. 1275-08-U, seeking relief under section 11, which provides that the Board may grant certification in certain circumstances despite this absence of membership evidence.

7. The Board will therefore not conduct a representation vote. Subsection 8(2) requires that a union demonstrate that it has the support of 40% of the bargaining unit, which this applicant acknowledges it does not have. The Board therefore has no authority to conduct a vote at this time, and hence may not certify the applicant under section 10, which requires the applicant to win a majority of votes cast in a representation vote.

8. The only way the applicant can be certified in the circumstances of this case is if it concludes under section 11 that the responding parties or a person acting on behalf of the responding parties have contravened the Act and, as a result, the applicant was not able to demonstrate that 40% or more of the individuals in the bargaining unit proposed in the application for certification appeared to be members of the union, and that the Board determines no remedy other than certification would be sufficient to counter the effects of the contravention. That will depend on the outcome of the application under section 96.

9. Therefore, these applications are referred to the Manager of Field Services to set a date for a meeting of the parties with a labour relations officer for the purposes of mediation. In the event that such a meeting is unsuccessful, these applications will be sent to the Registrar to set a date for hearing.

1732-06-R; 1811-06-R; 2869-06-R International Union of Painters and Allied Trades, Local 1795, Applicant v. **The Cadillac Fairview Corporation Ltd.**, CF/Realty Holdings Inc., Queenston Road Investment Inc., Eastgate Square Holdings Inc. and Redcliff Realty Management Inc., Responding Parties; International Union of Painters and Allied Trades, Local 1795, Applicant v. The Cadillac Fairview Corporation Ltd., CF/Realty Holdings Inc., Centre Mall Holdings Inc., Redcliff Realty Management Inc. and Kenilworth Avenue Investment Inc., Responding Parties; The Ontario Council of the International Union of Painters and Allied Trades and International Union of Painters and Allied Trades, Local 557, Applicant v. The Cadillac Fairview Corporation Limited, Responding Party

Construction Industry – Evidence – Practice and Procedure – Related Employer – Sale of Business – Union sought to have admitted thirty year old documents as "business records," specifically a letter commenting on the binding nature of a collective agreement – The employer objected arguing that it was caught in an impossible position as it must find the author or another witness to give evidence about documents that apparently created some 30 years ago have played no role in the corporation's existence since that time – The Board found the records were not admissible pursuant to s. 35(2) of the *Evidence Act*, in that the record did not meet any of the conditions set out in the subsection – The Board also found that even if s. 111(2)(c) of the *LRA, 1995* created a wider scope than s. 35, it would not admit the record because the documents are expressions of opinion by parties whose source of information and belief cannot be ascertained, and therefore no weight could be placed on them – Additionally, the Board applied the rule in *Browne v. Dunn* and did not admit evidence that contradicted earlier testimony by a witness where the contradiction was not put to the witness during cross examination – Matter continues

BEFORE: *David A. McKee*, Vice-Chair.

APPEARANCES: *A.M. Minsky, Laurie Kent* and *George McMenemy* for the applicant; *Michael D. Failes, Sandra Hardy* and *Geoffrey R. Ryans* for The Cadillac Fairview Corporation Ltd.; *Brian Mulroney* for Centre Mall Holdings Inc.

DECISION OF THE BOARD: August 14, 2008

1. This decision deals with two evidentiary rulings I am obliged to make in the course of this proceeding. They are unrelated and I will deal with each of them separately.

The Cadillac Fairview File

2. The Union sought to introduce as evidence a file that was produced from the records stored in Cadillac Fairview's offsite document archive ("the File"). The File is a collection of documents and draft documents contained in an unlabelled file folder. It contains a number of pieces of paper, some of which have handwritten notations on them. One letter was clearly advice from a law firm and the Union did not seek to adduce that document as evidence. In addition, it did not object to Cadillac Fairview's desire to obscure a portion of one page that appeared to refer to legal advice. None of the documents is a signed or executed document that purports to do or to record anything. There are, however, memos that appear to have been sent from one person to another person within the Cadillac Fairview organization, and there is one press release that was, perhaps, circulated outside of Cadillac Fairview. Some documents appear twice in the File.

3. The documents are of various sorts. The Union's attention was drawn particularly to what appears to be a memo from "Dave Armstrong" dated April 21, 1977. He was, apparently, an employee of Cadillac Fairview, although neither the Union nor counsel for the employer was able to identify what position he may have held or what his role in the Cadillac Fairview organization was. No one, however, suggested that he was not in some way involved in Cadillac Fairview. The memo bears a handwritten notation that another Cadillac Fairview employee would discuss the "approach suggested in it with G + G" (a reference to Goodman & Goodman, a law firm).

4. There is a draft trust agreement, likely drafted by Goodman & Goodman as appears from the backing sheet. It is not executed. The typed date is "1977", but it bears a handwritten date filling in the day and month as "31 May" and striking out the "7" and substituting for it a handwritten "4" in the year. One clause, which appears to me to be central to the issue discussed in Mr. Armstrong's memo, has been scratched out. There is no executed copy in the File or in other records with Cadillac Fairview.

5. There are memos asking others to execute the basic corporate documents, and perhaps even the Trust Agreement. There are also a couple of documents that contemplate the dissolution of the Corporation in November of 1981.

6. The Union seeks simply to file these documents as business records. But for counsel's agreement, they could easily have been identified as documents found in the offsite document archive of Cadillac Fairview by the last witness called by Cadillac Fairview, although that witness had no other knowledge of them. The Union is content to let the documents speak for themselves, although it would not (and indeed could not) object to Cadillac Fairview calling a witness with specific knowledge of them. While it wishes to mark as an exhibit the entire File, it is most clearly interested

in Mr. Armstrong's letter and his comments about the collective agreements binding on Cadco and his understanding of the purpose of the Cadco corporations.

7. Cadillac Fairview objects on the grounds that these are not the type of business records as defined in section 35 of the *Evidence Act* or otherwise. It argues that it is caught in an impossible position as it must find Mr. Armstrong or any other witness who may be able to give any evidence about documents that were apparently created some 30 years ago and have played no role in Cadillac Fairview's corporate existence since that time.

8. The Union agues that the evidence is admissible as business records under 35 of the *Evidence Act*, which provides:

> **35.** (1) In this section,
>
> "business" includes every kind of business, profession, occupation, calling, operation or activity, whether carried on for profit or otherwise;
>
> "record" includes any information that is recorded or stored by means of any device.
>
> **Where business records admissible**
>
> (2) Any writing or record made of any act, transaction, occurrence or event is admissible as evidence of such act, transaction, occurrence or event if made in the usual and ordinary course of any business and if it was in the usual and ordinary course of such business to make such writing or record at the time of such act, transaction, occurrence or event within a reasonable time thereafter.
>
> ...
>
> **Surrounding circumstances**
>
> (4) The circumstances of the making of such a writing or record, including lack of personal knowledge by the maker, may be shown to affect its weight, but such circumstances do not affect its admissibility.
>
> **Previous rules as to admissibility and privileged documents not affected**
>
> (5) Nothing in this section affects the admissibility of any evidence that would be admissible apart from this section or makes admissible any writing or record that is privileged.

In addition, and following on subsection 35(5), the Union argues that the documents ought to be admitted under subsection 111(2) (c), which provides as follows:

> **111.** (2) Without limiting the generality of subsection (1), the Board has power,
>
> ...
>
> (c) to summon and enforce the attendance of witnesses and compel them to give oral or written evidence on oath, and to

> produce the documents and things that the Board considers requisite to the full investigation and consideration of matters within its jurisdiction in the same manner as a court of record in civil cases;

9. Both counsel cited a considerable quantity of case law about the origin and development of the "business records" exception to the hearsay rule. While this research was of assistance to me, I do not propose to refer to all of the cases cited. It is sufficient to say in general terms that the rule is a specific one that addressed the extent to which the "hearsay dangers" of admitting certain kinds of documentary evidence are lessened or nullified by the circumstances under which they were created. The rule, both at common law and as qualified by section 35 of the *Evidence Act* and its specific application to each case, are all designed to establish a minimum threshold of reliability of the evidence. Simply put, the question is "do the circumstances under which the record was created sufficiently reduce or eliminate the hearsay dangers inherent in such evidence, such that *some* weight might be placed on the records?" If the answer is yes, the documents are admitted and the question of weight, like the weight of all evidence, is to be determined at the end of the day. If the evidence is not sufficiently reliable to be able to give it any weight, it must be rejected.

10. Two cases cited by counsel demonstrate how this general rule was applied to certain types of documentary records. In *Setak Computer Services Corporation Ltd. v. Burrough Business Machines Ltd. et al* [1972] 15 O.R. (2d) 750 (OHCJ), the issue was whether the defendant had provided adequate support for a computer system it had contracted to provide for the plaintiff. What constituted "support", what the parties had agreed to or could reasonably expect from one another, and what had in fact been done, were key evidentiary issues. The plaintiff sought to introduce the minutes of a meeting that took place before matters became litigious. The trial Judge (Justice Griffiths) admitted the documents for some, but not for all purposes. He concluded that the Minutes were created in the course of the ongoing business of both plaintiff and defendant in order to record what had been said, what had been promised and what the parties expected. The circumstances of the meeting fit within the definition of section 35(2).

11. The Court found that they were admissible for the specific statements recorded in them (the dates on which the meetings were held, the reports that were made, the persons attending, promises made to follow a certain course of action, and any agreements that were reached). The Court went so far as to say that a record made in the course of these business meetings could be offered as proof of the statements attributed to one or the other person alleged to have made them and as proof of any acts, transactions, occurrences or events that they say happened at that time.

12. There were two limitations on the admission of this evidence. The first was with respect to the opinions expressed in those Minutes:

> However, on the basis of the decision of my brother Brooke, J., as he then was, in *Adderly v. Bremner*, [1968] 1 O.R. 621, 67 D.L.R. (2d), the minutes may not be received to prove the validity of any opinion expressed at a meeting. I say that, regardless of who offered the opinion. I interpret his reasons as applying to those opinions which would not be accepted as evidence unless given by a duly qualified expert. Where the minutes contain opinions of that nature, they may not be used to establish the validity of such opinions.

Second, he refused to admit them as proof of evidence that, had the maker of the notes been called to the stand, would be hearsay from that person:

> In my view, however, the limitations imposed by the Johnson case [*Johnson v. Lutz* (1930) 253 N.Y. 124] are sound and are in accord with the basic philosophy of the Act. The Act was intended to make admissible records which, because they were made pursuant to a regular business duty, are presumed to be reliable. The mere fact that recording of a third party statement is routine imports no guarantee of the truth of the statement, and to construe s.36 as admitting hearsay evidence of any third party would make the section an almost limitless drag-net for the introduction of random testimony from volunteers outside of the business whose information would be quite beyond the reach of the usual test of accuracy. In my opinion, s. 36 of the Evidence Act should be interpreted as making hearsay statements admissible when both the maker of the writing or the entrant of the record, and the informant or informants, if more than one, are each acting in the usual and ordinary course of business in *entering and communicating an account of an act, transaction, occurrence or event.* [emphasis added]

13. The decision of the Ontario Court of Appeal in *Rob v. St. Joseph's Health Centre; Rantoul v. St. Joseph's Health Centre; Farrow v. Canadian Red Cross Society* [2001] O.J. 4605 demonstrates the need for specificity from the documentary evidence if factual conclusions are to be based on them. The records in that case were records of the results of certain tests, more typical of the kind of business records that one often sees in litigation. The specific issue before the Court was whether certain blood samples proved that the plaintiffs were not infected with HIV before a particular date. The date was of significance because, had they become infected after that date, it was likely the result of the negligence of one or more of the defendants. The records entered were evidence of a visit to a medical clinic in 1985, and the results of a blood test done on blood samples in 1992 that the plaintiffs alleged had been drawn from their veins in 1985. The trial court accepted the records as standing for the proof of that conclusion. The Court of Appeal differed. It found that the records were not sufficient to prove the factual conclusion that the plaintiffs sought. The Court concluded that the records only demonstrated some of the necessary facts. At paragraph 146 it said:

> At best, one could infer from the latter record that Mr. Rob was referred to the Haemophilia Clinic for assessment on May 8, 1985. However, in and of itself, this record provides no evidence that a blood sample was taken that day and certainly cannot constitute proof that, if a blood sample was taken at the St. Joseph's Hospital on that date, it is the same sample that made its way to the provincial testing laboratory some seven years later.

While the plaintiffs argued that the presence of some records and the absence of any other records ought to lead the Court to conclude that there was a link between the 1985 record and the 1992 blood test results, the Court was not satisfied that the records demonstrated that specific fact. They were therefore rejected for any probative purpose.

14. Applying the principles set out in these cases to the facts of this case, I conclude that the records are not admissible pursuant to section 35(2) of the *Evidence Act*. The subsection requires a litigant to prove three things:

(1) that there was an act, transaction or occurrence that transpired at a particular time;

(2) that the writing or record of it was made in the usual and ordinary course of a business;

(3) and if it was in the usual and ordinary course of such business to make such writing or record at the time of the alleged act, transaction or occurrence.

It is difficult to understand how the subsection meets any of these tests. The various memos and drafts do not record an act, transaction or occurrence. There is no document that shows a step taken or a document executed, or indeed a decision being made (except in 1981 to dissolve the corporation). It demonstrates only that various persons in the Cadillac Fairview organization thought about doing or not doing certain acts, transactions or occurrences; that others within the organization appear to have disagreed with these proposals; and that legal advice was sought but nothing was done.

15. It is not all that clear the records were kept in the usual and ordinary course of business. It is certainly usual and ordinary to keep a record of what one is thinking so that progress can be made on a particular issue, particularly where the decision must be made by a number of different persons. However, it is not part of the usual and ordinary business of Cadillac Fairview to record and memorialize its thought process. The casual manner in which the writings are jumbled together in the physical File suggest that there was no orderly or methodical desire or duty to keep a complete and accurate record of something that actually happened or was perhaps in the process of happening. The *Rob v. St. Joseph's Health Centre* case, *supra*, indicates the care that one must take in not drawing conclusions that go beyond precisely what is recorded in the documents. Here, there is really no evidence of any event or any process that occurred, just some thinking about one that might have occurred, but did not.

16. More importantly, following the rationale in *Setak v. Burroughs*, *supra*, the memo of David Armstrong, which appears is the focus of the Union's attention, is inadmissible for any of the purposes that the Union seeks. The paragraph about the purpose of Cadco executing the collective agreement is both hearsay and (since there is no evidence that David Armstrong was party to the original execution of the agreements) from a third party. It appears simply to be his opinion (or perhaps someone else's opinion that he is passing on) as to what was done or why it was done at sometime in the past. The File is not admissible under section 35 of the *Evidence Act*.

17. The Union argues that subsection 111(2)(c) of the *Labour Relations Act, 1995* creates a wider scope for the admission of documents than the strict application of section 35 of the *Evidence Act*, provided that the Board considers it requisite to the full investigation and consideration of matter within its jurisdiction. For purposes of this decision, I will take it as established that I could admit the document. In the circumstances, however, I cannot possibly give any weight to anything found in the File. As noted above, the collection of paper does not record an event, or a decision, or an act that was or was not undertaken by Cadillac Fairview. As far as I am able to discern, it appears to have arisen from a concern about reconciling two conflicting interests of Cadillac Fairview: the use of Cadco as an operating entity, perhaps for labour relations reasons, and the desire for tax reasons to ensure that all subsidiary corporations of Cadillac Fairview operate as bare trustees. There appears to have been a suggestion (which was not adopted) that Cadco ought to function only as a bare trustee. The evidence suggesting that someone at Cadillac Fairview executed the proposed Trust Document to create that status is inconclusive at best. Perhaps the real resolution of this conflict is the dissolution of the corporation in 1981. Given that the File appears to be incomplete (or perhaps Cadillac Fairview's thinking was incomplete), one cannot really form any conclusions about whether, in fact,

Cadillac Fairview did or decided to do or refrain from doing anything. Those statements that most attract the Union's attention are simple expressions of opinion by parties whose source of information and belief cannot be ascertained. It is impossible to draw any conclusion from these documents, and indeed dangerous to do so. Since I can place no weight on them at all, there is no point in a further examination of them. The documents will not be admitted.

Evidence of Tom Oldham

18. During the Union's case, it called Mr. Tom Oldham with respect to statements allegedly made by David Handley. David Handley had been a member of Cadillac Fairview since 1971 and at the time of the meeting, in 1989, he was working in the "Shopping Centre Group" as the owner's representative for shopping centre projects. Mr. Oldham's evidence, set out in more detail below, was essentially an allegation that Mr. Handley had acknowledged that Cadillac Fairview was bound to the Building Trades Working Agreement and would be acting in compliance with it. Cadillac Fairview objected to this evidence on the grounds that the specifics of the alleged admission had not been put to Mr. Handley in cross-examination and that it was unfair to the witness and to Cadillac Fairview to permit them to call that evidence after Cadillac Fairview had closed its case.

19. I ruled at that time that I would hear the evidence but reserve on whether or not to give it any weight. I did so in part because of the specific detail about which Mr. Handley was cross-examined, and more importantly, because the very frail nature of Mr. Oldham's health. In those circumstances, I did not wish to prolong his attendance before the Board. I have come to the conclusion that I may not place any weight on his evidence. The specifics of the evidence are important, so I will describe them in some detail.

20. Mr. Handley was called to the stand on June 19, 2008. He was cross-examined about a number of things. He was asked the following questions and gave the following answers:

> **Q.** Did you ever meet with Tom Oldham in February of 1989 about a Cambridge mall project?
>
> **A.** We don't have a Cambridge mall project. I don't recall a meeting with that gentleman. I wouldn't have been speaking to him about a Cambridge Mall.
>
> **Q.** Were you contemplating such a project then?
>
> **A.** No, I'm not aware of any.
>
> **Q.** Did you consider doing another Cambridge building project in the 80's or early 1990's?
>
> **A.** I don't recall that happening, and I'm not aware of any such meeting.
>
> **Q.** Mr. Oldham was with Bricklayers and he was also with the Kitchener-Waterloo Building Trades Council? Do you remember him?

A. I've had discussions with Building Trades Councils, not that specific area, but they have called from time to time.

Q. Why?

A. I was always uncertain who they represented, i.e. what other organizations. I've had discussions, I don't know who or when. Their intent was to ensure that we understood whom they represented and what they expected.

Q. Have you had a labour relations role?

A. No. I have signed Carpenters and Labourers' agreements, but that is not my primary function. I've just been asked to do it from time to time.

...

After lunch, the questioning continued.

Q. Do you remember a meeting with Tom Oldham on February 6, 1989 at 10:00 a.m. at 20 Queen Street West, Toronto, with Bill Sen and Ted Sampson? Bill Sen worked for BFC. Does that help to put the meeting in context with these gentlemen?

A. No, it does not.

Q. I show you Exhibits 5, 6 and 7. Have you ever seen them before?

A. No, I have not. I've never seen them before.

Q. Exhibit 6, was this the usual status of Cadco?

A. I couldn't offer an opinion on that. I can't agree that it was a division of Cadillac Fairview as I have no knowledge of that.

Q. I'm showing you Exhibit 7. Do you recognize that?

A. I'm not familiar with the terms of that letter.

21. On July 24, 2008 Mr. Oldham was called as part of the Union's evidence. He identified minutes of a meeting of the Kitchener-Waterloo Building Trades Council which referred to a meeting with Mr. Handley, Mr. Sen and Mr. Sampson on the dates that were put to Mr. Handley. The minutes record Mr. Oldham reporting to the Council about the meeting as follows:

> "Cadillac Fairview. David Handley, Edward Sampson and Bill Sen. General discussion about all aspects of the job. Concerns over whether we can supply labour;

> in case of a strike, will we help them. Project to start around the end of 1989. Project approx. 1-1½ years, with around 500 men on site".

It is evident that even the details about the possible disruptive effects of a strike were not put to Mr. Handley.

22. Mr. Oldham was then asked about the meeting and his evidence was as follows:

> **A.** Yes, I had a meeting with David Handley; there was no one else with the trades and with me. The purpose of the meeting was to discuss our concerns about the project being union. I was concerned about the Building Trades Council agreement. They agreed that there would be no problem about the Toronto Working Agreement and the job would be all union.

At that point, counsel for Cadillac Fairview objected and, for the reasons set out above, I reserved on that objection. Following that, Mr. Oldham continued his examination-in-chief and cross-examination. He clarified his statement and said that David Handley, (rather than "they") had specifically agreed that "he knew he was part of the Working Agreement". More importantly, he agreed that the proposed Cadillac mall in Kitchener was never built. It was simply a project that was contemplated and indeed, that the Building Trades Council supported before City Council and the Ontario Municipal Board, but that to this day it does not exist.

23. That statement and those facts should have been put to David Handley in cross-examination. It is not sufficient to put to him that a meeting took place and, when he says he does not remember such a meeting, simply to stop and move on to other matters. The only evidence of significance is the alleged "admission" of Mr. Handley; the other evidence is otherwise of no importance. The question put to him was whether he remembered meeting about the building of the Cambridge mall. His response was that Cadillac Fairview did not have a Cambridge mall. No such mall was ever built. When a witness is asked about a fact situation that he knows did not happen, he is likely to respond as Mr. Handley did (i.e. that events surrounding a non-existent project never happened) and the witness is unlikely to search his mind further. Although he was asked if Cadillac Fairview had contemplated such a project, it was an isolated question with no particular detail that would direct his attention to it more specifically. It is not enough simply to hear the witness say that he does not remember one meeting he is alleged to have attended in his 37 years with Cadillac Fairview. More fundamentally, if the essential evidence to be offered is an admission on the part of Mr. Handley, then it is the admission that ought to be put to him, not that he attended the meeting 20 years before he took the stand.

24. It is obvious that the Union had a copy of the Minutes of the Building Trades Council meeting and access to Mr. Oldham before Mr. Handley testified. From the specificity of counsel's questions about the identity of the persons at the meeting (which is recorded in the Minutes of the Building Trades Council) I assume counsel had a copy of those Minutes with him when he cross-examined Mr. Handley. I accept counsel's comment that he was unaware of the evidence of an admission during his cross-examination of Mr. Handley. However, the Union must have been aware of it, or could and should have taken steps to be aware of it. The allegation was not put to him with sufficient particularity when it should have been. There is no explanation for why the Union did not

place that information in counsel's hands before cross-examination of the person alleged to have made the admission.

25. The rule in *Browne v. Dunn* (1893) 6 R. 67 (H.L.), is, of course, not an iron-clad rule of evidence that the Board must follow. Indeed, it is a rule that has been elaborated in civil courts which all possess greater degrees of discovery process than the Board's process. In any event, it is a rule of "fairness" rather than anything else. In the course of this case, which has been a lengthy one, Cadillac Fairview agreed to call its evidence first. It called the evidence which it was required to do pursuant to subsections 1(4) and 69(13) case, in respect of which the rule in *Browne v. Dunn, supra,* has no application. However, it also led evidence with respect to the Union's assertions that it had bargaining rights and that such bargaining rights had been recognised as being binding on the whole organisation by Cadillac Fairview in the past. That is a matter that the Union wishes to prove. In that respect, Cadillac Fairview led evidence in response to the Union's allegations, and before the Union called its evidence. In that circumstance, Cadillac Fairview was entitled to have all of the particulars that the Union plans to prove by way of evidence. While it may not have been necessary to actually plead that particular (this was not argued), the assertion should have been put to Mr. Handley while he was in the stand. I now have conflicting evidence from two witnesses whose evidence and whose potential evidence (in the case of Mr. Handley, if there is any) has not been put to the other witness. I certainly could not use this conflicting evidence to make any finding of credibility about David Handley or Tom Oldham. Given the lack of specific questioning to Mr. Handley, I cannot resolve the contradiction between his evidence and that of Mr. Oldham.

26. In my view, it is not sufficient in this case to say that the employer can call Mr. Handley in reply. The employer's evidence occupied 11 1/3 days of hearing, much of it in response to the Union's specific allegations or motions about the need to call evidence. To permit the Union to call a case that consists of evidence that has not been put to witnesses who were called (as opposed to those who are not called) might well require the employer to call its entire case, in reply evidence, all over again, complete with the cross-examination that should have taken place the first time. The evidence process then becomes disorganized and may suffer in coherence, the Employer is put to the expense and difficulty of calling witnesses for a second time, and the Union has offered no reason for why Cadillac Fairview ought to be called on to take this step.

27. In the end, the evidence is sufficiently contradictory that I cannot reconcile the two of them. In the absence of cross-examination of Mr. Handley, it would be unfair to him to conclude that he was incorrect and Mr. Oldham was correct. The only way that it could be resolved would be if I were to conclude that the evidence of Mr. Oldham cast on Cadillac Fairview an obligation to respond. In these circumstances I decline to do so. Cadillac Fairview is not obliged to call witnesses for the purpose of having them cross-examined more than once. The evidence is therefore evidence on which I can place no weight, and accordingly, I will not admit it. Cadillac Fairview's objection to Mr. Oldham's evidence is sustained.

28. This matter resumes for hearing on August 21, 2008.

2525-07-U Canadian Corps of Commissionaires (Ottawa Division), Applicant v. Public Service Alliance of Canada, Responding Party

Practice and Procedure – Ratification and Strike Vote – Strike – The union, acting in error (not in bad faith) advised ten employees that they must sign union cards to be eligible to vote for strike action – The Board found as a fact that there were 53 employees in the bargaining unit, 43 of whom voted with 28 voting in favour of strike action – The Board noted that a clear majority of employees voted in favour of strike action, and that while the union may have breached its obligations under s. 79 for the conduct of strike votes and while some remedy might lie against the union for this conduct, there was no challenge to the validity of those 28 ballots cast in support of strike action – The Board found that no labour relations purpose would be served by declaring any ensuing strike to be unlawful where a majority of employees in the bargaining unit have signalled their support and to preclude such action on these facts would undermine the essential role to be played by strike (or lockout) in the collective bargaining process – Application dismissed

BEFORE: *Kevin Whitaker*, Chair.

DECISION OF THE BOARD; August 14, 2008

1. This is an application filed with the Board on November 9, 2007, under section 100 of the *Labour Relations Act, 1995,* S.O. 1995, c.1 as amended (the "Act"). The applicant employer sought amongst other things, a declaration of unlawful strike.

2. By decision dated November 17, 2007, the Board dismissed the application. What follows are the Board's reasons.

3. Most of the salient facts are set out in the Board's initial decision in this matter dated November 13, 2007. The employer argues that the respondent union conducted an unlawful strike vote by telling employees that they could only cast ballots in the strike vote if they were union members. For this reason, the employer suggests that any ensuing strike is unlawful:

> 2. The applicant employer takes the position that a strike vote held by the union on November 2, 2007 was conducted in a manner contrary to sections 79(8) and (9) and for that reason any strike conducted in reliance on that strike vote would be illegal. In particular, the employer alleges that representatives of the union advised members of the bargaining unit that only members of the union would be permitted to vote in the upcoming strike vote and further that some members of the bargaining unit who were not union members were ultimately refused the opportunity to vote. In its response, the union concedes that two of its representatives incorrectly advised members of the bargaining unit that in order to vote in the strike vote they had to be members of the union. The union denies that any member of the bargaining unit was actually denied a ballot on the basis that they were not a union member. In a subsequent letter, the union also states that: there are 53 employees in the bargaining unit; 43 of these individuals voted, of whom 28 voted in favour of strike action and 15 voted against strike action; and the remaining 10 individuals did not cast ballots.
>
> 3. In response to the union's disclosure of the numbers of individuals who allegedly voted for or against the strike action, the employer maintains its position that the vote is illegal and therefore a strike would be illegal. The

> employer does not specifically state whether it accepts the union's numbers as accurate.
>
> 4. If the union's statement of the numbers is accurate, this would not appear to be a case in which the Board should exercise its discretion to issue a declaration of illegal strike under section 100 of the Act. While the union's conduct may constitute a breach of sections 79(8) or (9) of the Act, nothing in those sections appears to require a declaration that any resulting strike would be illegal. Even if all 10 individuals who did not cast ballots failed to do so because of the union's actions, and even if all 10 of those individuals had cast ballots against strike action, a majority of all those voting would still have voted in favour of strike action.

4. In paragraph 5 of Appendix "A" to the application, the employer asserts that there are approximately 50 employees in the bargaining unit.

5. In its response filed with the Board on November 9, 2007, the union concedes that in error, it told some employees in the bargaining unit that they could only cast a ballot in the strike vote if they were union members. This reflects the practice in the federal jurisdiction, where this union mainly operates.

6. At paragraph 5 of Appendix "A" to the response, the union asserts that there are 53 employees in the bargaining unit. The union alleges that 43 of the 53 employees voted and that a clear majority cast ballots in favour of strike action.

7. By letter of November 13, 2007, the union asserted that of the 43 ballots cast, 15 employees voted against strike action and 28 voted in favour of strike action.

8. A hearing was convened in Ottawa on November 14, 2007 to hear the parties' submissions. At that time the Board (differently constituted) attempted unsuccessfully to mediate the matter. Nothing was adjudicated at this hearing.

9. The employer did not contest the union's assertion that there were 53 employees in the bargaining unit, that 43 ballots were cast, that 15 voted against strike action and that 28 voted in favour of strike action. Further, the employer did not challenge the union's allegation that it acted in error (and not in bad faith) when it told ten employees that they had to sign union cards to be eligible to vote.

10. In light of what appeared to be uncontested facts, and understanding that time was of the essence as the union was according to its theory, already in a strike position, the Board convened a teleconference hearing on the afternoon of Friday November 16, 2007.

11. At the outset of the teleconference hearing and for the first time in the proceedings without any advance notice to the union or the Board, the employer asserted that it wished to prove that the number of employees in the bargaining unit was not approximately 50 as alleged in the application, or 53 as alleged by the union in its response, - but rather was 64. The employer suggested that a full hearing would have to be scheduled to deal with this issue and that a number of witnesses would be required to testify.

12. The union took the position that it was now on the eve of a strike, too late for the employer to essentially amend its pleadings and assert a different number of employees in the bargaining unit eligible to participate in the strike vote. The union relied on the fact that it had in response, alleged that there were 53 employees in the bargaining unit, that the employer had not until the conference call challenged that figure, and that the parties had proceeded to hearing on the assumption that there was no factual dispute as to the number of employees in the bargaining unit eligible to participate in the strike vote.

13. In the circumstances, it is not appropriate to in effect, permit the employer to amend its pleadings at this point in the proceeding. It is the employer who first alleged that the number of employees in the bargaining unit was approximately 50. The union then alleged that it was in fact 53 employees and through a number of written submissions the parties have narrowed the issues in dispute, based on an understanding that there were 53 employees who should have been eligible to cast ballots.

14. Section 100 of the Act provides the Board with a discretion to declare a strike to be unlawful. The fact that a strike may be unlawful, does not automatically require the Board to declare it to be so. In a variety of cases, the Board has confirmed that it will only exercise this declaratory discretion where it will serve some labour relations purpose.

15. In this case, 28 of 53 employees in the bargaining unit have cast ballots in support of strike action. While it may very well be that as many as ten employees were improperly disenfranchised as a result of the union telling these employees in error that they could not cast ballots as non-members, there is no suggestion that this was an act of bad faith on the part of the union. The union asserts that it erred by following the protocol in the federal jurisdiction, with which it was most familiar.

16. Accepting that there were in fact 53 employees in the bargaining unit eligible to participate in the strike vote, it is clear that 28 of those employees voted in favour of strike action and that this number represents a clear majority of employees in the bargaining unit.

17. It may be that the union has in the administration of the strike vote, breached its statutory obligations under section 79 of the Act which govern the conduct of strike votes. It may even be through a complaint brought under section 96 of the Act, that some remedy might appropriately lie against the union for its conduct. There is however, no challenge to the validity of those 28 ballots cast in support of strike action, nor the fact that these 28 votes represent a majority of employees in the bargaining unit.

18. In the circumstances, the Board concludes that no labour relations purpose would be served by declaring any ensuing strike to be unlawful where a majority of employees in the bargaining unit have signalled their support for such action. Where the Board is satisfied that a majority of employees in the bargaining unit have indicated by secret ballot their support for strike action, the union should in these circumstances, be able to threaten and/or commence a strike. To preclude such action on the facts before the Board, would undermine the essential role to be played by strike (or lockout) in the collective bargaining process.

19. For these reasons, the application was dismissed.

0387-08-HS Steven Mroczynski, Applicant v. **Castonguay Blasting GP** and Claude Nadon, Inspector, Responding Parties

Health and Safety – Practice and Procedure – Timeliness – After the inspector reviewed the applicant's complaint at the workplace, the applicant was advised there was no contravention of the Act – The inspector did not issue an Order – The inspector returned to the workplace three days later and provided the employer with a Field Visit report, but did not provide the complainant with the report – There is no provision in the Act requiring the inspector to confirm in writing the refusal to issue an order, nor requiring the inspector to provide the complainant with the Field Visit report until it is asked for – The applicant appealed to the Board within 30 days of having received the Field Visit report, but beyond the 30 days of the Inspector's decision not to issue an order – The Board found the appeal untimely – Appeal dismissed

BEFORE: *Susan Serena*, Vice-Chair

DECISION OF THE BOARD; August 7, 2008

1. This is an appeal filed under section 61 of the *Occupational Health and Safety Act*, R.S.O. 1990, c.O-1 as amended (the "Act"). The appeal was filed on April 30, 2008. This decision deals with the issue of whether this appeal was filed within the 30-day time period provided in subsection 61(1) of the Act.

2. Subsection 61(1) of the Act provides as follows:

> **61.** (1) Any employer, constructor, licensee, owner, worker or trade union which considers himself, herself or itself aggrieved by any order made by an inspector under this Act or the regulations may appeal to the Board within 30 days after the making of the order.

Pursuant to subsection 61(5) of the Act, the decision by an Inspector not to issue an order constitutes an order for the purpose of subsection 61(1) of the Act. Finally, there is no provision in the Act that gives the Board the discretion to extend the 30-day time limit to file an appeal under subsection 61(1) of the Act.

3. By decision dated May 26, 2008, the Board sought written submissions from the parties regarding the timeliness of this application and the applicant's request for the Board to extend the time to file this application.

4. The pertinent background facts are as follows: In response to a complaint from the applicant regarding an alleged violation of the Act the Inspector met with the applicant on February 29, 2008. After reviewing the applicant's concerns the Inspector told the applicant there was no contravention of the Act. Before he left the worksite, the Inspector met with the employer to discuss the complaint and his determination the Act had not been violated. The Inspector did not issue any order as a result of the applicant's complaint. On March 3, 2008 the Inspector returned to the workplace and provided the employer with the Field Visit Report (No. 5078394) regarding his investigation of applicant's complaint on February 29, 2008. The Inspector did not provide the

applicant with a copy of this Field Visit Report until after the applicant inquired about the status of his complaint and requested a copy of this report on April 1, 2008.

5. The Ministry of Labour asserts the Inspector was not required to prepare a Field Visit Report in this instance because he did not issue any orders as a result of his investigation into the applicant's complaint. Further, the Ministry contends that under subsection 57(10) of the Act, the Inspector was not required to provide the applicant with a copy of the Field Visit Report until such time as the applicant requested a copy of this document on April 1, 2008. It further asserts that on February 29, 2008 the Inspector advised the applicant the Act had not been contravened and therefore, the applicant knew, or ought to have known, the Inspector had refused to issue an order. Accordingly, the Ministry of Labour submits this appeal is untimely because it was not filed within 30 days of the Inspector's decision not to issue an order.

6. The applicant asserts this appeal was filed in a timely manner because the Inspector did not provide him with a copy of the Order/Field Visit Report (No. 5078394) until April 1, 2008. He further asserts he could not file this application until he had a copy of the Field Visit Report because Rule 22.1 of the Board's Rules of Procedure and the application form (Form -65) require the applicant to include a copy of the Field Visit Report with the application. He further submits the Board and the Ministry should not rely on a belief the applicant understood the verbal findings of the Inspector and should instead require the Inspector to provide a written report that clearly represents the Inspector's findings as to whether or not the Act has been contravened. The applicant also asserts that pursuant to subsection 57(10) of the Act he ought to have received a copy of the report when it was issued on March 3, 2008. He asks the Board to extend the time to file this application.

7. The Board has consistently determined it does not have the discretion to extend the 30-day time period within which an application for review must be filed under subsection 61(1) of the Act.

8. Accordingly, whether or not this application is timely under subsection 61(1) depends upon what date constitutes the date of the "making of the order". If it is the date the Inspector visited the site and did not issue any order (i.e. February 29, 2008) or the date the Field Visit Report was issued to the constructor (i.e. March 3, 2008) then the application is untimely. However, if it is the date when the applicant/complainant received a copy of the Field Visit Report (i.e. April 1, 2008) then this application was filed in a timely manner.

9. Unfortunately, the Board's decision in this matter dated May 26, 2008, incorrectly quoted subsection 57(10) of the Act. In fact, this provision reads as follows:

> 57 (10) Where an inspector makes an order in writing or issues a report of his or her inspection to an owner, constructor, licensee, employer or person in charge of the workplace,
>
> a) the owner, constructor, licensee, employer or person in charge of the workplace shall forthwith cause a copy or copies thereof to be posted in a conspicuous place or places at the workplace where it is most likely to come to the attention of the workers and shall furnish a copy of such order or report to the health and safety representative and the committee, if any, and

> b) if the order or report resulted from a complaint of a contravention of this Act or the regulations and the person who made the complaint requests a copy of it, the inspector shall cause a copy of it to be furnished to that person.

10. As the Board previously discussed in *Laser Electric,* [2006] O.O.H.S.A.D. No. 96 (Board File No. 0610-06-HS) there is no provision in the Act which requires the Inspector to confirm in writing the refusal to issue an order. This is so, even where an individual has filed a complaint alleging a violation.

11. The requirement to confirm an order in writing under subsection 57(2) only arises when the Inspector determines the Act has been violated and a contravention order is issued under subsection 57(1) of the Act. Where an order is issued a copy of the order must be posted in the workplace and given to the health and safety representative (or health and safety committee) as directed by subsection 57(10) of the Act.

12. Although the applicant makes a good point about the confusion that can arise when the Inspector does not confirm his decision in writing, the Act simply does not require such written confirmation where the Inspector declines to issue an order. Further, the Board notes the applicant in this instance did not assert in either his application or subsequent submission that he did not know the Inspector had refused to issue an order on February 29, 2008.

13. The fact that the Inspector chose to prepare a Field Visit Report regarding his investigation into the applicant's complaint and then delivered it to the employer does not alter the fact that this appeal relates to the Inspector's decision not to issue an order on February 29, 2008. Even if the Field Visit Report was prepared on a subsequent date and not provided to the employer until March 3, 2008 it does not change the date of the Inspector's decision on February 29, 2008 not to issue an order in response to the applicant's complaint.

14. Further, under subsection 57(10) of the Act there is no requirement to provide a copy of the Field Visit Report to a complainant until after the complainant asks the Inspector for a copy of the Report or Order. Furthermore, it would appear that under subsection 57(10) the statutory obligation on the Inspector to provide the complainant with a copy of the Order or Field Visit Report only arises where the Inspector determines the Act was contravened and issues a contravention order.

15. Finally, the references in the Board's application form (A-65) and Rule 22.1 of the Board's Rules of Procedure directing an applicant to include "a copy of the Inspector's Order (Field Visit Report)" cannot and do not override the Act to require either the preparation or dissemination of a Field Visit Report where the Act does not so mandate. Once again, the application form and Rule are simply designed to ensure that where the appeal relates to a contravention order the Field Visit Report (which under subsection 57(3) of the Act must indicate the general nature of the contravention and the location of the contravention) is provided with the application. Clearly, this requirement does not arise where the appeal relates to a refusal to issue a contravention order.

16. In conclusion this appeal relates to the Inspector's decision on February 29, 2008 not to issue an order. This appeal was not filed with the Board until April 30, 2008. Accordingly, as this appeal was not filed within the 30-day time period prescribed by subsection 61(1) of the Act, it is untimely and must be dismissed.

1452-07-EP Ted Cooper, Applicant v. **City of Ottawa**, Responding Party

***Environmental Protection Act* – Practice and Procedure – Reprisal – Timeliness – The employer argued that this reprisal application should be dismissed because it is precluded by the doctrines of issue estoppel and abuse of process, in addition to being untimely – The Board found that an arbitration panel in a grievance proceeding had fully considered the issues raised by the applicant in this reprisal complaint, even when the union had withdrawn the reprisal component of the grievance during final argument before the arbitration board – The Board also found that the application was untimely; rather than filing immediately after the impugned conduct, the applicant waited until the decision of the arbitration board to make his claim – Application dismissed**

BEFORE: *Ian Anderson*, Vice-Chair.

DECISION OF THE BOARD: July 11, 2008

1. This is an application under section 174 of the *Environmental Protection Act*, R.S.O. 1990, c. E.19 as amended. The applicant, Ted Cooper, alleges that he has experienced reprisals from his employer, the responding party, as a result of raising and pursuing certain issues in compliance with the Act.

2. The application was filed with the Board on July 25, 2007. By letter dated August 8, 2007 the employer requested that the application be dismissed on a preliminary basis. In subsequent correspondence Mr. Cooper and the employer have made submissions in relation to the employer's request.

3. The background to this application is as follows. The application relates to certain events in 2004 and 2005. These events culminated in a letter dated July 26, 2005 restricting the scope of Mr. Cooper's duties and subsequently a one day suspension accompanied by a detailed letter of warning dated September 15, 2005. Mr. Cooper's employment is subject to a collective agreement and he filed a grievance dated October 12, 2005 with respect to the employer's actions. The grievance alleged, *inter alia*, reprisals on a prohibited ground under the *Environmental Bill of Rights, 1993*, S.O. 1993, c. 28 ("EBR") and under the *Environmental Protection Act* ("EPA"). The grievance was referred to arbitration. Mr. Cooper alleges that in opening statements before the board of arbitration, the employer took the position that any EBR or EPA reprisal allegation could only be addressed by this Board. It appears, however, that the employer also indicated that it was prepared to argue this issue, and certain other "preliminary" issues, at the end of the case. The board of arbitration held five days of hearing. Before final argument, the union withdrew the reprisal allegations. The board of arbitration issued its award on July 19, 2007. As noted, the present application was filed on July 25, 2007.

4. The board of arbitration directed the employer to reduce the scope of the restrictions to Mr. Cooper's duties set out in the July 26, 2005 letter. It also upheld the one day suspension. In doing so, the board of arbitration made the following statements:

> *Was there just cause for the imposition of discipline in these circumstances? In our view, the answer must clearly be, "yes ". The grievor quite deliberately wrote to his colleagues — and superiors — with respect to a*

> *long-debated subject which he had very distinctly been told no longer to raise in the workplace. It is of no moment that he wrote on his own time, or from his home. He wrote to his colleagues at their workplace, and sought their support — or at least asked if he had their support — in his campaign, however well-intentioned, to impugn his employer's approval of a development project. This was, we find, in direct contravention of a proper instruction from the employer, and the grievor was subject to discipline on that account. To discipline the grievor for this act of insubordination was not to attempt to silence him in his attempt to raise, or to continue to raise, his concerns about the project which worried him. As to that, the employer made clear that the grievor was perfectly entitled to continue, as a citizen, to raise his concerns through the appropriate channels, and the grievor has indeed done that. The employer, however, is entitled to attempt to have its proper work conducted in a regular way and in accordance with reasonable standards of workplace decency. The direction given the grievor not to discuss the Carp River/Kanata West project further with his colleagues was, as we have found, within the proper exercise of management rights. The grievor clearly violated that direction. In our view, there was just cause for the imposition of discipline in those circumstances.*

And later:

> *The grievance, set out above, alleges a number of alleged violations of the grievor's rights, although during the course of final argument, the union indicated that it was withdrawing the second allegation dealing with reprisals. The substance of the case presented to us has been dealt with in the foregoing, but it is, we think, appropriate to note that, having regard to all of the evidence, we do not conclude that the grievor was the subject of any personal harassment by his managers, nor were the grievor's rights of freedom of expression violated. On the contrary, the proper expression of his views and his concerns was explicitly recognized by the employer.*

The employer argues that the present application constitutes a collateral attack on the findings of the board of arbitration. It finds support for this argument in Mr. Cooper's submissions dated December 20, 2007, which assert in part that the summary of facts presented in the board of arbitration's decision is "incomplete (and partially inaccurate)". As such, the employer argues that the application is precluded by the doctrines of issue estoppel or abuse of process. Further, it argues that the application to this Board is untimely.

5. Mr. Cooper argues that the doctrines do not apply because the reprisal allegations were withdrawn. I will return to this argument in the next paragraph, but first will address a number of subsidiary arguments advanced by Mr. Cooper. First, in his letter dated December 20, 2007, Mr. Cooper asserts that he was "precluded" from raising the reprisal issues at arbitration. This does not appear to be accurate. Rather, it appears from Mr. Cooper's letter dated August 17, 2007, and the arbitration award itself, that the issues were withdrawn by the union at the conclusion of the arbitration hearing. Second Mr. Cooper refers to the fact that the EPA places the onus on a responding party to disprove an allegation of reprisal. I note that because the issue before the board of arbitration was one of just cause for discipline, the onus was on the responding party in those proceedings as well.

6. Mr. Cooper argues that in order for the doctrine of issue estoppel to apply three preconditions must be met, as recently summarized by the Supreme Court of Canada in *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 S.C.R. 460 at para. 25:

> (1) that the same question has been decided;
> (2) that the judicial decision which is said to create the estoppel was final; and,
> (3) that the parties to the judicial decision or their privies were the same persons as the parties to the proceedings in which the estoppel is raised or their privies.

7. Mr. Cooper asserts only that the first of these three preconditions has not been met. While acknowledging that "the facts and evidence to be adduced before the OLRB may be similar to those evaluated by the Arbitration Board", he argues that the first of these preconditions has not been met, because the EPA clearly provides that the question of whether or not there has been a reprisal must be determined by this Board, and only by this Board. In any event, he notes that in *Danyluk* the court also observed that estoppel is an equitable doctrine, and argues that even if the preconditions are met the Board should not apply the doctrine in the circumstance of this case to avoid potential injustice. In particular, he argues that dismissal of the application would thwart the legislative intention that a reprisal application may only be brought before this Board.

8. The doctrine of issue estoppel and the closely related doctrine of abuse of process are concerned in part with fairness. Mr. Cooper argues that it would be unfair for the Board to dismiss his application at this time without inquiring further. For the following reasons, I disagree.

9. First, I have considerable doubt about the accuracy of Mr. Cooper's premise that only this Board could determine whether or not there was a reprisal contrary to the EPA. Section 48(12)(j) of the *Labour Relations Act, 1995* provides in pertinent part:

> ... an arbitrator or an arbitration board, as the case may be, has power,
>
> ....
>
> (j) to interpret and apply human rights and other employment-related statues, despite any conflict between the terms of those statutes and the terms of a collective agreement.

It appears at least arguable, therefore, that the board of arbitration had the jurisdiction to address the allegation that the employer's disciplinary actions constituted a reprisal contrary to the EPA.

10. Second, even if I am wrong with respect to the first point, it is important to note that Mr. Cooper could have filed a complaint with this Board in 2005 with respect to his reprisal allegations. It was open to him to pursue all of the issues and seek all of the remedies which he now claims only this Board can address in an application to the Board at that time. He did not do so. Instead, he chose to proceed by way of a grievance under the collective agreement. Only now, following the issuance of the arbitration award, does he seek to bring on this application. It is difficult to see how a refusal of this Board to deal with Mr. Cooper's application on this basis can be said to be unfair to him when it is a product of his own decisions. Further, and in any event, I agree with the employer that the application to this Board at this time is untimely.

11. Third, Mr. Cooper's claim that the employer acted improperly towards him has been fully considered by the board of arbitration. Thus, this is not a case like *Danyluk* where, in exercising its equitable discretion not to apply the doctrine of issue estoppel, the court stated (at paragraph 80):

> Whatever the appellant's various procedural mistakes in this case, the stubborn fact remains that her claim ...has simply never been properly considered and adjudicated.

It is clear that Mr. Cooper's claim of improper conduct on the part of the employer was considered and adjudicated upon by the board of arbitration. Further, while the union withdrew the reprisal allegations in final argument, it appears that the board of arbitration wished to make clear that it saw no basis for such an allegation, as reflected in the second portion of its decision excerpted above.

12. For all of the foregoing reasons, the application is dismissed.

2474-07-ES; 2718-07-ES Daniel Diena, a Director of Deles Industries Limited, Applicant v. Michael J. Ashton, Joey L. Harris, Mohammad Imtiaz, Jie Jiang, Elizabeth Jones, Abinash Ramnarayan, Ron W. Walzak and Director of Employment Standards, Responding Parties; Kenneth R. Irwin, a Director of Deles Industries Limited, Applicant v. Michael J. Ashton, Joey L. Harris, Mohammad Imtiaz, Jie Jiang, Elizabeth Jones, Abinash Ramnarayan, Ron W. Walzak and Director of Employment Standards, Responding Parties

Abandonment – Employment Standards – Fraud – Settlement – The two directors agreed to settle the review of orders to pay with 4 of 7 claimants – Irwin paid his portion of the settlement; when Diena failed to make any of the promised payments, the claimants sought to rescind the settlement and reinstate the original Order on grounds of fraud – The Board found that the claimants were fraudulently induced to enter into the settlement because although Diena had the means to pay the settlement, it appears he had no intention to do so – Diena's failure to attend the hearing was further evidence of his lack of commitment to the settlement – The Board voided the settlement and reinstated the full Order to Pay, less monies already paid by Irwin – As for the other 3 claimants, since Diena failed to appear at the hearing, the Board considered his application against them to be abandoned

BEFORE: *Tanja Wacyk*, Vice-Chair.

APPEARANCES: *Steven Foster* and *Kenneth R. Irwin* appearing for Mr. Irwin; no one appearing for Daniel Diena; *Michael J. Ashton, Joey L. Harris, Mohammad Imtiaz, Elizabeth Jones, Abinash Ramnarayan,* and *Ron W. Walzak* appearing on their own behalf; no one appearing for the Director of Employment Standards.

DECISION OF THE BOARD: July 7, 2008

1. These are applications under section 116 of *Employment Standards Act, 2000,* S.O. 2000, c.41, as amended (the "Act") for review of an Order to pay issued against the applicants Daniel Diena

and Kenneth R. Irwin in their capacity as directors of Deles Industries Limited in respect of wages found owing to seven claimants.

2. The styles of cause are amended to delete the names of Brad Hawke and Thonsay Saythathongsack, who were erroneously listed in prior Board decisions.

3. In the Board's decision of January 14, 2008 (otherwise constituted), the Board indicated that the applicants and the claimants, Michael Ashton, Joey L. Harris, Elizabeth Jones and Ron W. Walzak, had resolved this matter by reaching a settlement agreement (the "settlement") pursuant to subsection 120(4) of the Act.

4. Pursuant to the request of the parties, the Board adjourned these applications insofar as they relate to these employees *sine die* for a period not exceeding one year, on the condition that these applications for review would terminate without notice to the parties in accordance with subsection 120(4) of the Act when the parties did what they had agreed to do under the settlement, or one year from the date of the Board's decision, whichever occurred first, unless a party requested that the Board list the applications for hearing before they were terminated.

5. Further, by decision dated May 8, 2008, I directed the Registrar to list these applications as they relate to the remaining claimants, Mohammad Imtiaz, Jie Jiang, Abinash Ramnarayan for hearing.

6. The Board subsequently received correspondence from the Ministry of Labour, dated May 27, 2008, indicating Mr. Diena had failed to make any of the agreed to payments to the Director of Employment Standards in trust, contrary to the settlement agreement referred to in paragraphs 3 and 4, above.

7. Pursuant to the Ministry's request, by decision dated May 29, 2008, I directed the Registrar to re-list the applications, as they related to all the claimants, for hearing at the same time.

Kenneth R. Irwin's Application

8. At the hearing, I was advised that Mr. Irwin has paid the $500 he was to pay pursuant to the settlement, to each of Michael Ashton, Joey L. Harris, Elizabeth Jones and Ron W. Walzak, and that he has entered into a settlement, pursuant to subsection 120(4) of the Act, with Mohammad Imtiaz, and Abinash Ramnarayan, two of the remaining claimants.

9. Pursuant to the request of the parties, and with the exception of the application as it relates to the entitlement of Jie Jang, the Board hereby further adjourns Mr. Irwin's application *sine die* as it relates to Mohammad Imtiaz, and Abinash Ramnarayan, for a period not exceeding one year on the condition that this application for review shall terminate without notice to the parties in accordance with subsection 120(4) of the Act when the parties do what they have agreed to do under this settlement, or one year from the date of the Board's decision, whichever occurs first, unless a party requests that the Board list this application for hearing before it is terminated.

10. The Board, further to Mr. Irwin's request, grants an adjournment of the hearing of his application as it relates to Jie Jang, with whom Mr. Irwin has not been able to communicate thus far.

The adjournment is granted until August 1, 2008. If the Board is not advised to the contrary by that date, it will dismiss Mr. Irwin's application as it relates to Jie Jang as abandoned.

11. The Registrar is directed to forward a copy of the settlement agreement between Mr. Irwin and Mohammad Imtiaz, and Abinash Ramnarayan to the Director of Employment Standards.

Daniel Diena's Application

12. Despite having been advised by Notice of Hearing dated June 4, 2008, that this matter had been scheduled for hearing on July 2, 2008 at 9:30 a.m., Mr. Diena failed to attend at 9:30 a.m. on July 2, 2008. Paragraph 4 of the Notice of Hearing states (emphasis in original):

> IF YOU DO NOT ATTEND THE HEARING, THE BOARD MAY DECIDE THE APPLICATION WITHOUT FURTHER NOTICE TO YOU AND WITHOUT CONSIDERING ANY DOCUMENT FILED BY YOU.

Application as it relates to Mohammad Imtiaz, Jie Jiang, Abinash Ramnarayan

13. In accordance with its usual practice, the Board waited until after 10:00 a.m. before beginning the hearing. The applicant was still not in attendance. Consequently, the Board dismissed Mr. Diena's application as it relates to Mohammad Imtiaz, Jie Jiang, Abinash Ramnarayan, as abandoned.

Application as it relates to Michael Ashton, Joey L. Harris, Elizabeth Jones and Ron W. Walzak

14. Michael Ashton, Joey L. Harris, Elizabeth Jones and Ron W. Walzak were all in attendance, but the Ministry, who had requested that this matter be set down for hearing, was not.

15. In their settlement with Michael Ashton, Joey L. Harris, Elizabeth Jones, and Ron W. Walzak, (the "signatories") Mr. Diena and Mr. Irwin both undertook to pay certain monies to the Director of Employment Standards, in trust for the signatories, by no later than January 16, 2008. These amounts represented a much smaller amount of monies than were found to be owed to the signatories. As indicated above, Mr. Irwin satisfied his commitment.

16. The signatories advised that to the best of their knowledge no payments have been made by Mr. Diena pursuant to the settlement. They indicated their investigation had determined that Mr. Diena had sufficient assets to satisfy the terms of the settlement, but appears simply unwilling to do so.

17. They further submitted that Mr. Diena's reneging on the settlement is consistent with a pattern of conduct they had observed when Deles Industries Limited was still in operation. Specifically, they indicated that Mr. Diena, on occasion, would write a cheque to a party to whom money was owed, and would then promptly attend at the bank to put a stop payment on the cheque.

18. The signatories submit they were enticed into the settlement on the basis of fraud, in that it is now apparent that Mr. Diena, although having entered into the settlement, and having the capacity to do so, had no intention of honouring it. As a result, the signatories have forfeited their entitlement

to the full monies they were found to be owed. They ask that the original Order against Mr. Diena regarding the monies found owing to them be reinstated.

ANALYSIS:

19. Section 120(5) of the *Employment Standards Act* provides as follows:

> **120.** (5) If, upon application to the Board, the employee demonstrates that he or she entered into the settlement as a result of fraud or coercion,
>
> (a) the settlement is void;
>
> (b) the complaint is deemed never to have been withdrawn;
>
> (c) any order made in respect of the contravention or alleged contravention is reinstated;
>
> (d) any proceedings respecting the contravention or alleged contravention that were terminated shall be resumed.

20. Fraud requires an intent to defraud as opposed to an honest or unintentional mistake *(J & Z Holdings Inc.* [2005] O.E.S.A.D. No. 644 at paragraphs 20 – 21; *Flowers By Dozen Inc.* [2005] O.E.S.A.D. No. 86 at paragraph 16. Fraud has been defined as follows in the judgment of Buckley, J., in *London and Globe Finance Ltd. (Re),* [1903] 1 Ch. 728 at pp. 732-733:

> "To defraud is to deprive by deceit: it is by deceit to induce a man to act to his injury. More tersely, it may be put, that to deceive is by falsehood to induce a state of mind; to defraud is by deceit to induce a course of action."

21. In this instance, in the absence of any evidence or assertions to the contrary, I find that Mr. Diena, being in a position to satisfy the terms of the settlement, entered into it with no intention of paying the monies he had undertaken to pay into trust, with the consequence that Michael Ashton, Joey L. Harris, Elizabeth Jones and Ron W. Walzak, the signatories of the settlement, are left with a much diminished entitlement and none of the advantages of having entered into the settlement.

22. I am persuaded, in the circumstances, that Michael Ashton, Joey L. Harris, Elizabeth Jones and Ron W. Walzak entered into the settlement with Mr. Diena as a result of fraud. Consequently, I declare that the settlement entered into between them and Mr. Diena is void, and the full Order to pay made against Mr. Diena, regarding monies owed to Michael Ashton, Joey L. Harris, Elizabeth Jones and Ron W. Walzak is reinstated, subject to a reduction of $2,000.00, to reflect the monies paid by Mr. Irwin pursuant to the settlement.

23. Daniel Diena's application is dismissed. He is directed to pay the monies owed pursuant to Order to Pay No. 32798, less $2,000.00, to the Director of Employment Standards, in trust, no later than 30 days from the date of this decision.

2730-07-HS Greater Essex County District School Board, Applicant v. Ontario Secondary School Teachers' Federation, District 9; Canadian Union of Public Employees, Local 27; Canadian Union of Public Employees, Local 1348; Elementary Teachers' Federation of Ontario and Rick Taggart, Inspector, Responding Parties

Health and Safety – The inspector issued orders arising from the school board's refusal to permit a worker member, who was only present at the workplace in question one day a week, to act on the joint health and safety committee (JHSC) – The school board argued that members of the JHSC must have a significant, regular, principal connection to the workplace – The Board found that the Act did not require a worker to have such a connection to the workplace, but rather that he or she must only be employed at the workplace and selected by the workers – The Board declared that the school board's refusal to allow the worker to act on the JHSC was a breach of the Act

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *L. P. Kavanaugh, A. Cook* and *T. Lauzon* for the applicant; *Vaino Poysa, Jane Ste. Marie, Tracie Edward-Palmer, Bruce Awad* and *Jennifer Fehr* for Ontario Secondary School Teachers' Federation; no one appearing for Canadian Union of Public Employees, Locals 27 and 1348; *Mandy Wojcik, Susan Ansara* and *Gary Osley* for the Elementary Teachers' Federation of Ontario; *Grainne McGrath* and *Jeff McInnes* for Rick Taggart, Inspector.

DECISION OF THE BOARD: August 25, 2008

1. This is an appeal pursuant to section 61(1) of the *Occupational Health and Safety Act*, R.S.O. 1990, c. O.1. Greater Essex County District School Board (the "School Board") appeals two orders of Rick Taggart, an Inspector under the Act. Both relate to the appointment by a union entitled to represent the workers in the workplace, the Ontario Secondary School Teachers' Federation ("OSSTF"), of Ken Griffin as a worker member of the joint health and safety committee ("JHSC"). There is no dispute that the School Board refused to permit Mr. Griffin to act on the JHSC. This prompted the two orders under appeal.

FACTS

2. The hearing of this matter was conducted on the basis of the following Agreed Statement of Facts:

AGREED STATEMENT OF FACTS

1. The Appellant is a District School Board. The School Board has 94 building and school sites located throughout Essex County, with approximately 4,500 employees. The School Board operates 64 elementary school and 16 secondary schools.

2. On November 8, 2007, Inspector Richard Taggart attended at Belle River District High School, one of the Greater Essex County District School Board's schools and issued 2 Orders under the *Occupational Health and Safety Act* (the "*Act*"). The Orders read as follows:

Order No. 1
Pursuant to section 9(7) of the Occupational Health and Safety Act, at least half the members of a committee shall be workers employed at the workplace who do not exercise managerial functions.
Note:
The employer has not allowed a worker, Mr. Ken Griffin, to be part of the Committee.

Order No. 2

Pursuant to section 25(2)(e) of the Occupational Health and Safety Act, without limiting the strict duty imposed by subsection (1), an employer shall, (e) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions.

Note:
The employer cannot control which worker is selected for the Committee if the worker is selected in compliance with the Act. Mr. Ken Griffin has been properly selected.

3. Prior to June 30, 2007, the Greater Essex County District School Board (the "School Board") discharged its statutory health and safety obligations with respect to its employees through a Multi-Site Health and Safety Committee, established by Order of the Minister of Labour under s. 9(3.1) of the Act on December 12, 2003.

4. In December 2003, pursuant to the authority vested in the Minister in s. 9(3.1) of the *Act,* the Minister issued an Order establishing a Joint Health and Safety Committee for more than one workplace. The Minister's Order issued in December of 2003 was revoked effective June 30, 2007 by Order dated June 22, 2007 with the result that the establishment of a Joint Health and Safety Committee at each of 94 workplaces was required.

[There is no paragraph 5.]

6. As a result of the rescission of the December 12, 2003 Order, the School Board is required to establish Joint Health and Safety Committees at each of its workplaces.

7. With respect to the composition of the Joint Health and Safety Committee at Belle River District High School, the School Board has selected two management representatives to sit on the Committee, and the trade unions have selected two worker representatives.

8. One of these worker representatives is Mr. Ken Griffin. Mr. Griffin has been employed by the School Board since September 17, 1984 as a Social Worker/Attendance Counsellor. Mr. Griffin is currently the president of the OSSTF District 9 Professional Student Services Personnel bargaining unit.

9. Mr. Griffin is responsible for the provision of social work services, including the assessment and counselling of individual students experiencing social/emotional/behavioural difficulties at 7 schools within the School Board, including Belle River District High School.

10. Throughout the work week, the Complainant provides social work support to a family of school [sic] as listed at tab 4 of the Applicant's Book of Documents.

[There is no paragraph 11.]

12. The Complainant is scheduled and allotted specific dates and times throughout the work week to service each of the above-named schools. With respect to Belle River District High School, the Complainant is only scheduled to attend at that school on Mondays, for the full day. Mr. Griffin is also scheduled to be in Belle River, at Belle River Public School for on-half day on Thursday and Fridays.

13. With four exceptions only, the School Board has appointed its members to the various Joint Health and Safety Committees on a discrete, one committee only basis. These four exceptions are:

    a. The Principal of a school was appointed as the School Board's member of the Committee for that school and on the Committee of another site physically adjacent to that school with respect to which she also is the Principal;

    b. Three Principals were appointed as the School Board's member of the Committees at more than one workplace simply because each of them is the Principal of a particular program which is conducted on a regular basis at each of the workplaces where they were appointed as the School Board member of that workplace committee.

14. The workplace identified in the Orders is Belle River District High School. That school has a workforce of 81 workers. *(Note: The Premise/Project Form incorrectly reflects 87)* 79 of whom are members of the various Unions that have a presence at that location, including: OSSTF District 9 — Secondary Teachers, OSSTF District Occasional Teachers, OSSTF District 9 — Education Support Staff, OSSTF District 9 — Professional Student Services Personnel, CUPE Local 27 and CUPE, Local 1348.

15. There are other staff at Belle River District High School from whom the unions could select the second worker representative for the school's Joint Health and Safety Committee.

3. The parties also agreed that the School Board could state that its evidence would be that Mr. Griffin does not attend the staff meetings at Belle River District High School. The OSSTF asserts that Mr. Griffin is not required to attend these meetings.

4. Finally, there is no dispute that the Elementary Teachers' Federation of Ontario ("ETFO") also represents workers of the School Board. It participated in the hearing as a full party.

ANALYSIS

5. For ease of reference, I set out certain pertinent parts of section 9 of the Act:

> **9.** (4) The constructor or employer shall cause a joint health and safety committee to be established and maintained at the workplace unless the Minister is satisfied that a committee of like nature or an arrangement, program or system in which the workers participate was, on the 1st day of October, 1979, established and maintained pursuant to a collective agreement or other agreement or arrangement and that such committee, arrangement, program or system provides benefits for the health and safety of the workers equal to, or greater than, the benefits to be derived under a committee established under this section.
>
> ...
>
> (6) A committee shall consist of,
>
> (a) at least two persons, for a workplace where fewer than fifty workers are regularly employed; or
>
> (b) at least four persons or such greater number of people as may be prescribed, for a workplace where fifty or more workers are regularly employed.
>
> (7) At least half the members of a committee shall be workers employed at the workplace who do not exercise managerial functions.
>
> (8) The members of a committee who represent workers shall be selected by the workers they are to represent or, if a trade union or unions represent the workers, by the trade union or unions.
>
> (9) The constructor or employer shall select the remaining members of a committee from among persons who exercise managerial functions for the constructor or employer and, to the extent possible, who do so at the workplace.
>
> (10) A member of the committee who ceases to be employed at the workplace ceases to be a member of the committee.

6. Noting that section 9(4) of the Act imposes the obligation to establish the JHSC upon it as the employer, the School Board prefaces its argument by asserting that for it to recognize Mr. Griffin as a member of the JHSC would be inconsistent with its obligation under section 25(2)(h) of the Act to "take every precaution reasonable in the circumstances for the protection of a worker". Noting that on average Mr. Griffin is only present in the workplace one day a week it argues that there is a pool of other individuals who are at the workplace every day, any one of whom as a result would be a better choice.

7. The School Board argues that the Act contemplates that worker members of a JHSC appointed under section 9(8) must have a significant, regular, principle connection to the workplace to which the JHSC relates. In general, it suggests that this is a theme of the Act. In particular, it argues that this result flows from section 9 of the Act for the following reasons:

a. The number of members of the JHSC required by section 9(4) of the Act increases with the size of the workforce. This, the School Board says, recognizes that a larger workforce generates more work for the JHSC, requiring as a result a larger number of members. This only makes sense, it says, if the members of the JHSC are present in the workforce.

b. But for the fact that this workforce is represented by a union, section 9(8) provides the worker members of the JHSC would be selected by the workers in the workforce. While acknowledging that in this case, the union gets to choose the worker members of the JHSC, the School Board posits that the workers would be unlikely to choose a worker who was only there one day out of five over a worker who was there five days out of five.

c. Section 9(9) of the Act expressly requires that "to the extent possible" an employer shall select the remaining members of the JHSC from persons who exercise managerial functions at the workplace in question. The School Board argues that section 9(8) and 9(9) must be read together and that the reason that there is not a similar requirement in section 9(8) was that it was never intended that a worker representative would be connected to other workplaces.

d. This conclusion, the School Board argues, is reinforced by section 9(10), which provides: "A member of the committee who ceases to be employed at the workplace ceases to be a member of the committee."

8. The School Board argues that this conclusion is also supported at a pragmatic level by consideration of the powers conferred upon a JHSC by section 9(18) and the duties imposed upon the JHSC by section 9(31) to investigate cases where a worker is killed or critically injured. The School Board asserts that a person who is only at the workplace one day out of five is not the best choice to ensure that these functions can be performed compared to a person who is at the workplace five days out of five. Reference is also made to section 9(32) which requires an employer to post the names of the members of the JHSC. The School Board argues that this provision underscores the expectation that members of the JHSC will be readily available in the workplace so that they can be contacted by other workers.

9. The School Board notes again its obligation as an employer pursuant to section 25(2)(h) to "take every precaution reasonable in the circumstances for the protection of a worker". It notes that a parallel obligation is imposed upon supervisors pursuant to section 27(2)(c) of the Act. It points to section 66 of the Act which makes contravention of the Act an offence and notes that in determining

whether an offence has been committed under the Act, the Ontario Court of Appeal has stated in *Ontario (Ministry of Labour) v. Hamilton (City)*, (2002) 35 O.R. (3d) 37 that the Act should be interpreted in a manner that recognizes that it is a remedial public welfare statute intended to guarantee a minimum level of protection for the health and safety of workers, and that narrow or technical interpretations which frustrate the attainment of these objectives should be avoided.

10. I am not persuaded by the School Board's arguments.

11. First, I do not accept that the Act contemplates that worker members of a JHSC appointed under section 9(8) must have a significant, regular, principle connection to the workplace to which the JHSC relates.

12. The sections of the Act which expressly touch on who may be a worker member of a JHSC are:

> Section 9(7), which requires that the individual be a worker employed at the workplace who does not exercise managerial functions;
>
> Section 9(8), which requires that the individual be selected by the workers the individual represents, or if the workers are represented by a trade union selected by the workers; and
>
> Section 9(10), which makes it clear that an individual ceases to be employed in the workplace ceases to be a member of the JHSC.

Consideration of the plain meaning of the words of these sections does not result in the conclusion that there is any requirement that the individual have a significant, regular, principle connection to the workplace to which the JHSC relates.

13. The School Board's argument would require reading in a requirement of significant, regular and principle connection to the workplace not only to section 9(8), governing the selection of worker members of the JHSC, but also into section 9(10), governing when an individual ceases to be a member of the JHSC. Application of the principle of consistent expression supports the conclusion that there is no requirement of "regular" employment. The term "regularly employed" is used in sections 9(2)(a) and (b), 9(6) (a) and (b) and (13), which suggests that when the Legislature wished to refer to workers who were "regularly employed" it did so. Nor do the School Board's arguments with respect to sections 9(4), (9), (10), (18), (31) and (32) give rise to the necessary implication that a requirement of significant, regular and principle connection to the workplace be read into section 9(8).

14. To the extent that the School Board's argument with respect to sections 9(4), (9), (10), (18), (31) and (32) is that as a matter of best practices a worker with a significant, regular and principle connection to the workplace must be appointed as a worker member over one who lacks such a connection, I am not persuaded for the following reasons.

15. First, who would be the "best" appointee in a particular situation may be a product of a number of factors, not limited to whether a worker has a significant, regular and principle connection to the workplace. The fact that Mr. Griffin has exposure to a number of different schools and is the

president of the OSSTF District 9 Professional Student Services Personnel bargaining unit may render him a "better" worker member than some one who is at the workplace five days a week notwithstanding the fact that for four days a week Mr. Griffin may not be readily available to perform duties of a member of the JHSC.

16. Second, requiring the "best" worker member be appointed necessarily implies a constraint on the ability expressly given to the workers, or the trade union, under section 9(8) of the Act to freely choose any worker employed in the workplace as a worker member of the JHSC. Nothing in the Act requires that the trade union, or the workers, make the best possible choice in the circumstances. Nor, in my view, should such a constraint be implied. The opposite conclusion would result in endless issues for litigation. For example, in the absence of an express list of factors in the statute, against what set of factors is a choice under section 9(8) to be evaluated? Further, section 9(8) contemplates a choice by the workers in the workplace if no trade union has representation rights. While a trade union, as a singular entity, might be able to articulate the set of factors upon which it made its choice, there is no reason to think that each of the workers in a workplace would have considered the same factors, even if the choice of the worker members of the JHSC was unanimous. Rather, as in any democratic process, motivations for voting for any particular candidate may be varied. In my view, therefore, the fact that section 9(8) provides that a group decision may be the basis on which worker members are chosen implies that choices under that section should be subject to the most minimal of constraints, as indeed they are: any worker who does not perform managerial functions may be chosen as a worker member of a JHSC provided that they are, and continue to be, employed in the workplace.

17. All parties advised the Board that this is a case of first impression with respect to this issue. However, the OSSTF and ETFO relied upon *Scarborough Professional Firefighters Assn.*, [1996] O.O.H.S.A.D. No. 68, in which a trade union challenged the appointment by the employer pursuant to section 9(9) of District Chiefs as the managerial members of the JHSC, arguing that the station Captains would be more appropriate. In rejecting this argument, the adjudicator stated that she accepted in total the arguments of the responding parties. Those arguments included: the language of section 9(9) clearly gives the employer the discretion to choose its representatives to the JHSC, subject only to the requirement that the individual exercise managerial functions for the employer in the workplace; any other restriction to that discretion would have to be read in to the Act; the trade union does not get to choose the employer's representatives; and the structure of the JHSC is based on an adversarial model, with the result that the discretion exercised by either party in appointing their representatives to the JHSC should not be lightly interfered with.

18. All but the last of these arguments parallel the reasons given earlier in this decision. I also agree with the final argument, but would note that it was not fully argued before me in this case.

19. Finally, in view of some of the submissions of the responding parties, I would note that I do not understand the School Board to have argued that Mr. Griffin is not a "worker" within the meaning of section 9(7) or 9(8) because he does not have a significant, regular and principle connection to the workplace. However, if I am mistaken in this regard, and while I also accept many of the other submissions of the responding parties, I would simply note that "worker" is defined under the Act as meaning "a person who performs work or supplies services for monetary compensation". Nothing in this definition requires that an individual have a significant, regular or principle connection to a workplace in order to be a worker within the meaning of the Act and the

opposite conclusion would obviously frustrate the purpose of the Act of protecting the health and safety of all workers.

20. In the result I find that Mr. Griffin was properly appointed a worker member of the JHSC. The issue then becomes whether the School Board's refusal to allow Mr. Griffin to act on the JHSC was in breach of the Act. Little argument was addressed to this issue. The orders cite sections 9(7) and 25(2)(e). It is convenient to set out section 9(7) again, as well as setting out section 25(2)(e):

> **9.** (7) At least half the members of a committee shall be workers employed at the workplace who do not exercise managerial functions.
>
> ***
>
> **25.** (2) Without limiting the strict duty imposed by subsection (1), an employer shall,
>
> ...
>
> (e) afford assistance and co-operation to a committee and a health and safety representative in the carrying out by the committee and the health and safety representative of any of their functions;

21. Since I have found that Mr. Griffin was properly appointed to the JHSC, and there was no issue that the JHSC was otherwise short worker members, it is not apparent to me how section 9(7) could be said to be breached. The first order is, therefore, set aside. However, the School Board's refusal to allow Mr. Griffin to act on the JHSC in my view constitutes a failure to afford assistance and co-operation to the JHSC contrary to section 25(2)(e) of the Act. Accordingly, the Greater Essex County District School Board is ordered to comply with section 25(2)(e) of the Act by recognizing the right of Ken Griffin, the worker selected by the trade unions representing the workers in the workplace, to act on the Joint Health and Safety Committee.

3528-07-G Labourers' International Union of North America, Local 506, Applicant v. **High Point Environmental Inc./HPE Environmental Inc.**, Responding Party

Construction Industry Grievance – *Occupational Health and Safety Act* – The union grieved the failure of the responding party to pay employees for specific training in asbestos removal required by a Regulation under the *Occupational Health and Safety Act* – The Board found that the employer had arranged for the training and had directed the employees to attend the three-day course – Pursuant to the provisions of the Regulation as well as the collective agreement, the responding party was responsible for compensating its employees who attended the training – Owners are equally responsible as employers for compliance with the Regulation – Grievance allowed

BEFORE: *Marilyn Silverman*, Vice-Chair.

DECISION OF THE BOARD: July 25, 2008

1. This is a referral of a grievance to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act").

2. The parties have provided the Board with agreed facts and have made written submissions on them. The Agreed Facts are as follows:

AGREED FACTS

1. The parties agree with paragraphs 1, 2, 3, 4, 5, 6 and 7 of the Response. The parties are bound by the Demolition agreement as referenced in the grievance referral.

(a) **1)** High Point is an active demolition and hazardous material abatement contractor in the Province of Ontario.

(b) **2)** The Applicant represents certain employees of High Point. Those employees are employed pursuant to the agreement between the Ontario Association of Demolition Contractors Inc. and the Applicant.

(c) **3)** Pursuant to Article 6.01 High Point is obligated to call the "Local Union office for his needed supply of qualified men...". In addition, pursuant to the terms of the Collective Agreement, High Point pays, amounts to various union funds, including an apprenticeship and training fund.

(d) **4)** During the course of its business, High Point is engaged in asbestos removal and abatement work.

(e) **5)** Asbestos abatement work is split into three categories pursuant to Section 12 of Ontario Regulation 278/05 ("Reg. 278/05") under the *Occupational Health and Safety Act* (the "OHSA"). The categories are referred to as Type 1, Type 2 and Type 3. The categories escalate from Type 1 to Type 3 depending on the level of precaution and complexity of measures required to control asbestos during the work.

(f) **6)** Pursuant to Section 20 of Reg. 278/05, effective November 1, 2007, employers were required to ensure that any individual involved in Type 3 Asbestos removal had "successfully completed the Asbestos Abatement Worker Training Program approved by the Ministry of Training, Colleges and Universities." Completing the program results in a certificate being issued to the employee which certificate is, pursuant to Section 20(3), deemed to be conclusive proof of the [sic] having completed the program. Effective November 1, 2007, members of the Applicant who had not completed the program would not legally by able to perform Type 3 asbestos abatement work.

(g) **7)** The content and requirements of the Asbestos Abatement Worker Training Program were released in the summer of 2007 and included classroom training and a written test. The timing of the release left very little time until the deadline for worker certification.

2. There are 35 members of the Applicant in the bargaining unit who took the Type 3 training. They were not paid their wages for the three day course. Further, the employees who took the test were not paid their wages for time spent taking the test.

3. The training was conducted by the Training Centre, which is run by the jointly funded and administered Training Trust Fund. The tests were conducted by George Brown College.

4. Both the training and the test were conducted on weekdays between the hours of 6 a.m. and 6 p.m.

5. The Responding Party contacted the Training Centre and was notified that the Training Centre was in a position to provide the training. The Training Centre notified High Point of available dates for the training and the Responding Party contacted George Brown College for available dates for testing.

6. The Responding Party approached its bargaining unit employees, including but not limited to, each of the 35 individuals that attended the training – each of whom was a current bargaining unit employee – and, after advising them of the government requirement for the training and certificate in order to perform Type III work which is a component of the work this employer performs, asked them if they wished to take the training course and test.

7. Subsequent to speaking to individual employees, the Employer posted the Notice contained in Tab 8 of the Union's Book of Documents.

8. The parties agree with paragraphs 11, 12, 13, 14 and 15 of the Response.

   (a) **11)** Not all employees who expressed interest in attending did so. For example, Kaan Ozpeynici, Sargon Schmoel, Hipolito Alba Carlos, Luis Yugue and Francisco Cordero were initially signed up but did not attend. Employees of failed to atten ' were not subject to discipline.

   (b) **12)** Other employees who had not initially expressed an interest in attending subsequently opted to attend at the training.

   (c) **13)** One non-bargaining unit representative of High Point attended at the start of the first day and the finish of the third day of the training sessions. There was no representative of High Point otherwise present at the training. The Applicant recorded who had attended the training sessions. Not all persons at the training sessions were employees of High Point.

   (d) **14)** The tests were administered at George Brown College. Results of the tests, including certification cards, were

provided directly to employees and not to High Point. Employees subsequently notified High Point of their success or failure in the test and/or provided a copy of their certification.

(e) **15)** Training sessions occurred in mid to late September of 2007 and, subsequently, on or around December 12, 2007, the Union filed the instant grievance referencing Article 11.06 of the Collective Agreement.

9. The training and testing was conducted in accordance with and pursuant to the Regulations, excerpts of which are contained in Tab 3 of the Union's Book of Documents.

10. The training sessions were not limited to or specifically scheduled for High Point. The Applicant's evidence will be that with the exception of Priestly Demolition, which has also been grieved, all other contractors' bound to the collective agreement which sent their employees to the training and testing paid for the wages of employees for both. The Responding Party does not agree to the relevance of this assertion.

11. As a result of the foregoing, the Union filed the grievances at Tab 2 of its Book of Documents.

12. The document at Tab 7 of the Union's Book of Documents accurately reflects the facts in respect of the training and testing and that the testing fee was paid by the Responding Party.

13. The Responding Party understands the Applicant was not able to refer certified members at the time. The Responding Party did not request the referral of employees.

3. The issue for determination is whether High Point Environmental Inc. ("High Point") is required to compensate employees for attendance at the Type 3 asbestos work training and testing.

4. The parties are bound to the collective agreement between the Ontario Association of Demolition Contractors Inc. and the Labourers' International Union of North America, and the Labourers' International Union of North America, Ontario Provincial District Council, on behalf of its affiliated Local Unions, 183, 247, 493, 506, 527, 607, 625, 837, 1036, 1059, 1081 and 1089 ("the Demolition Agreement").

5. The applicant's position is two-fold. One is that employees who attended the training and the testing were at work and should be paid for that time. The other relies on Article 11.06 of the Demolition Agreement which provides as follows:

> Employees are to be paid for job orientation time and costs including specific training and medicals as required by the Owner.

6. The applicant provided the Board with a letter issued by the High Point Manager of Operations to individuals which states in part as follows:

> Please be advised that I have signed up all workers for a 3 day course at the Union Hall and a (sic) Exam at George Brown College – Castle Loma Campus. Please see below for the dates you are to attend.
>
> [list of names and dates omitted]

7. As reflected in the aforementioned facts, the applicant also says that with the exception of one other employer in the province all other employers bound to the Demotion Agreement paid for Type 3 asbestos training and testing. Although High Point advises that it is not in a position to contradict that evidence, it asserts in any event that it is not relevant to the legal determination that I must make. I agree. That submission was not a factor in my determination of this case.

8. The responding party asserts that it was not required to pay employees for either attendance at the Type 3 asbestos training instruction nor for attendance at the test. The basis for this position is that High Point did not direct the employees to attend, they were not under the direction or control of High Point, nor was High Point obligated to perform the training. In High Point's view the nature of the asbestos training in Regulation 278/05 (the "Regulation") of the *Occupational Health and Safety Act,* R.S.O. *1990*, c. O.1, as amended (the "OHSA") under which it is required, the sequence of events giving rise to the training and the terms of the Demolition Agreement, support its position that there is no obligation to pay and consequently that the grievance should be dismissed. I have set out the three arguments of the responding party on that basis.

Regulation 278/05:

9. Section 20 of the Regulation requiring the training reads as follows:

> Asbestos abatement training programs
>
> **20.** (1) The employer shall ensure that,
>
> (a) every worker involved in a Type 3 operation has successfully completed the Asbestos Abatement Worker Training Program approved by the Ministry of Training, Colleges and Universities; and
>
> (b) every supervisor of a worker involved in a Type 3 operation has successfully completed the Asbestos Abatement Supervisor Training Program approved by the Ministry of Training, Colleges and Universities.
>
> (2) The Employer shall ensure that every worker and supervisor successfully completes the appropriate program required under subsection (1) before performing or supervising the work to which the program relates.
>
> (3) A Document issued by the Ministry of Training, Colleges and Universities, showing that a worker has successfully completed a program mentioned in subsection (1), is conclusive proof, for the purposes of this section, of his or her successful completion of the program.

(4) In accordance with the *Agreement on Internal Trade, 1995* and the *Protocols of Amendment,* a worker shall be deemed to hold a document showing successful completion referred to in subsection (3) if he or she has successfully completed equivalent training in another province or territory of Canada, as determined by the Director.

10. The other relevant portions of the Regulation are section 2(1) and section 19:

2.(1) This Regulation applies to,

(a) every project, its owner, and every constructor, employer and worker engaged in or on the project;

(b) the repair, alteration or maintenance of a building, the owner of the building, and every employer and worker engaged in the repair, alteration or maintenance;

(c) every building in which material that may be asbestos-containing material has been used, and the owner of the building;
(d) the demolition of machinery, equipment, aircraft, ships, locomotives, railway cars and vehicles, and every employer and worker engaged in the demolition; and

(d) subject to subsection (3),

(i) work described in subsection (2) in which asbestos-containing material is likely to be handled, dealt with, disturbed or removed, and

(ii) every employer and worker engaged in the work.

...

19(1) The employer shall ensure that instruction and training in the following subjects are provided by a competent person to every worker working in a Type 1, type 2 or Type 3 operation:

1. The hazards of asbestos exposure.

2. Personal hygiene and work practices.

3. The use, leaning and disposal of respirators and protective clothing.

11. High Point says that the employer's obligation is to ensure that anyone performing the Type 3 asbestos work is certified to do so. That is different than High Point providing the means by which the employee is certified.

12. It draws a parallel with trade certification under the *Trades Qualification and Apprenticeship Act.*

13. The essence of High Point's distinction is that it was obliged to only use individuals trained in Type 3 asbestos work who had the requested training but it was not required to pay for that training.

14. High Point asserts that the training renders the person trained similar to a "certified trade" and entitles them to work for any employer thereby benefiting the individual. As well, the Regulations does not create any obligations to an "owner"; which is related to the reference to Article 11.06 of the Demolition Agreement.

The Events

15. The responding party's submission is that the individuals were not under the direction and control of High Point while attending the training and testing and accordingly not "at work". High Point did not mandate the attendance of any individuals, it simply advised them of the government certification requirement and facilitated the training opportunity performed by the Training Centre, a jointly funded and administered training trust fund.

16. High Point highlights the distinction between the individuals being legally required to perform the work and the fact that it was not required by High Point. It relies in part on the following jurisprudence for that distinction *Riverdale Hospital and CUPE, Local 79* (1987), 7 C.L.A.S. 110 (Weatherill), where nurses faced lay off if they did not upgrade their skills. The Board of Arbitration found that, although the employer/hospital wanted nurses to upgrade through the course offered, it did not make that a requirement.

17. Similarly High Point argues that no individual was required or instructed to take the course. Further, not all employees who were offered the course took it, some agreed to take it and did not attend, and some who were not approached took it. This "pattern of attendance" as referred to by High Point confirmed that the course was not attended under the direction, control or instruction of High Point. There was neither management supervision nor any assurance by the responding party that those who attended remained in attendance. There was no discipline meted out for non-attendance.

Article 11:06 of the Demolition Agreement

18. The responding party asserts that this provision does not obligate it to compensate individuals. That is because the Type 3 asbestos training is not required by the "owner" but rather required by the Regulation.

19. The responding party identifies its role as identifying and communicating dates of the training. In addition High Point asserts that the specific circumstances outlined in Article 11.06 illustrates that other circumstances were not intended to be paid under this provision.

Submissions on Jurisprudence

20. The applicant relies on the following cases: *Steinberg Inc. v. United Food and Commercial Workers International Union, Local 486* [1985] 20 LAC (3d) 389, *Otis Elevator Co.* [1992] OLRB Rep. January 61, *London and District Association for the Mentally Retarded* (1984) 16 (L.A.C.) 3rd 165 (Saltman), *Lapaco Paper Products Ltd.* (2002) 17 L.A.C. (4th) 74 (Weatherill). The

responding party relies on cases in the hospital sector *Riverdale Hospital and CUPE, Local 79* (1987), 7 C.L.A.S. 110 (Weatherill), *Hotel-Dieu Grace Hospital* [2004] O.L.A.A. No. 70 and *St. Mary's General Hospital* (1995), 40 C.L.A.S. 452 (Beck).

21. In the former group of cases relied upon by the applicant, the Boards of Arbitration found that employees attending training at the direction of the employer are at work and entitled to be compensated where employees were watching an instructional video, taking an aptitude test for a job posting, attended off site training or a professional development courses (although in two cases, the compensation sought was for travel).

22. The responding party distinguishes these cases based on suggestions that the time required was mandatory or the collective agreement language was different. It also notes the difference highlighted above regarding a claim for travel time where the employer is already compensating for time worked.

23. The cases relied upon by the responding party includes denials by Boards of Arbitration for compensation in the case of re-certification for CPR training, or upgrade to avoid layoff.

Decision

24. The employees attended the Type 3 asbestos training and testing course during regular working hours. They did so pursuant to an initiative by their employer and a letter from their employer that began by advising them that they were "signed up" for the course and ending with "the dates you are to attend". I am of the view that the employees would regard that as a mandate from the employer to attend the training and testing.

25. The reason behind that directive by the employer was the Regulation requiring workers to have training in order to perform Type 3 asbestos work. It may be that having the training benefited the workers who were trained in terms of their marketability with other employers in the same way as being a skilled tradesperson benefits the individual, but the reason that High Point wanted its workers trained was so that it could do that part of its business that was asbestos removal and abatement work.

26. The Regulation works with the collective agreement language and with the facts of this case. Article 2 of the Regulation provides that it applies to "every project, its owner and every constructor, employer and worker". All those entities and individuals have a responsibility in respect of Type 3 asbestos training and testing.

27. Article 20 says that the employer's responsibility in that regard is to ensure that every worker and supervisor successfully completes the required program before they set about doing that work.

28. It seems clear that with that statutory mandate, High Point set about a course of action to arrange for the training and testing with George Brown College and set up a schedule telling individuals when to attend. Had High Point not done so, it would not have been able to utilize employees in order to get that type of its work done. It was not an option for the employer to perform Type 3 asbestos work without trained individuals and logically not an option for the employees not to attend the training which their employer had arranged.

29. Accordingly, employees who attended the training and testing were in attendance at the direction of their employer, were scheduled and instructed to attend during their normal working hours and were obtaining training for work that the employer required they be trained for. The fact that some employees said they would attend and did not and were not subject to discipline does not change the fact that this was a requirement of the employer.

30. The suggestion that the Type 3 asbestos training creates the equivalent of a certified trade is not an accurate representation of what this training is about. In order to do this work the employer needed its workers to have specific training.

31. Article 11.06 of the collective agreement admits to a similar interpretation. The responding party says that this case is about a requirement of the Regulation and not a requirement of the owner.

32. What this argument misses is that an owner is a defined term under the OHSA and the Regulation is made pursuant to that act. Owners are equally responsible with employers to ensure that the Regulation is complied with and the obligation for specific training and safety measures is met. Where specific training is required by the OHSA, owners are obligated to ensure that training before work can be performed at their sites.

33. Article 11.06 makes clear that the employer is required to pay employees for costs that include specific training required by an owner. Given that the owner is obliged by the Regulation to ensure persons who perform the Type 3 asbestos work on their premises are properly trained, it follows that the obligation for paying for such training is what is contemplated in Article 11.06. This means that the employer is liable under the provisions of the Demolition Agreement to meet the costs of the training obligation.

34. I find that employees who attended the Type 3 asbestos training and testing were required to do so by High Point and accordingly, were at work and entitled to be paid for their time spent in that attendance. Alternatively, the employees were required to be paid for that time pursuant to Article 11.06 of the Demolition Agreement.

35. The grievance is allowed. I remain seized to deal with the issue of damages if not resolved by the parties.

0670-08-M Kingston Typographical Union, Local 30204, Applicant v. **Kingston Whig-Standard**, Responding Party

Bargaining Unit – Certification – *Prima Facie* Motion – Reconsideration – The union applied to consolidate six bargaining units into three – The employer brought a "no *prima facie* case" motion – The Board has the power to reconsider its past decisions, including certification decisions providing bargaining unit descriptions – However, certificates are spent when the parties enter into their first collective agreement – The bargaining units negotiated by the parties supersede the ones described in the Board's certificates – Hence the current bargaining units, as described in the collective agreements negotiated between the parties, supersede any

consolidated units that the Board could order through its reconsideration power – The union has not made out a *prima facie* case for consolidating its bargaining units, which was the relief sought – Motion granted; application dismissed

BEFORE: *Lee Shouldice*, Vice-Chair.

DECISION OF THE BOARD: August 5, 2008

Introduction

1. The applicant (hereinafter referred to, along with its predecessors, as "the KTU") has filed this application with the Board, requesting that the Board exercise its powers pursuant to sections 9, 45, 111(1), 111(2) and 114 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as amended (hereinafter "the Act") to consolidate a number of its bargaining units located at the Kingston Whig-Standard (hereinafter "the Whig-Standard") in Kingston, Ontario.

2. The Whig-Standard has filed a response to this application with the Board. Amongst other arguments raised in its response, the Whig-Standard asserts that there is no legal basis for the bargaining unit consolidation sought by the KTU. It requests that the KTU's application for consolidation be dismissed by the Board without a hearing or consultation pursuant to section 39.1 of the Board's Rules of Procedure.

3. By way of decision dated May 30, 2008, the applicant was asked to provide the Board with written legal submissions regarding the question of whether the KTU's application for consolidation should be dismissed because it does not disclose a *prima facie* case for the relief requested. Counsel for the applicant has filed submissions with the Board in response to that request.

4. Rule 39.1 of the Board's Rules of Procedure provides that where the Board considers that an application does not make out on its face a case for the orders or remedies requested, even if all of the facts stated in the application are assumed to be true, the Board may dismiss the application without a hearing or consultation. I have assessed the request made by the Whig-Standard in accordance with this Rule. That is, I have assumed that all of the facts contained in the application are true. To the extent that it was unclear whether certain historical facts pleaded by the Whig-Standard in its response were contested by the applicant, at the request of the Board counsel for the applicant advised of his client's agreement or disagreement with those historical facts by way of correspondence dated July 15, 2008.

Facts

5. The KTU is a local of the Communication Workers of America Canada, which is affiliated with the Communications Workers of America. The KTU represents six bargaining units, all of which are located at the Whig-Standard in Kingston, Ontario. These are the only bargaining units represented by the KTU.

6. The six bargaining units at the Whig-Standard are the following:

> (a) a full-time Editorial unit, which is currently covered by a collective agreement effective from January 19, 2006 until January 18, 2009. There are

approximately 21 employees in this unit. The recognition clause contained in this collective agreement encompasses "employees employed in the editorial department save and except: Editor, News Editor, Sports Editor, City Editor, Features Editor, Editorial Page Editor, Photo Editor, part-time employees regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period";

(b) a part-time Editorial unit, which is currently covered by a collective agreement effective from January 19, 2006 until January 18, 2009. There are approximately 3 employees in this unit. The recognition clause contained in this collective agreement encompasses "all part-time employees employed in the newsroom functions as listed in the certification order";

(c) a Mailing Room unit, which is currently covered by a collective agreement effective from January 19, 2006 until January 18, 2009. There are approximately 30 employees in this unit, made up of 3 full-time employees and 27 part-time employees. The recognition/jurisdiction clause contained in this collective agreement encompasses "all types of work now being performed in the mailing room department of the Company. Subject to this Section 2, Section 21 of Appendix B and Section 21 of Appendix C, non-bargaining unit employees of the Company shall not be used to perform bargaining unit work within the jurisdiction of the Union";

(d) a full-time Business Office unit, which is currently covered by a collective agreement effective from January 19, 2006 until January 18, 2009. There are approximately 3 employees in this unit. The recognition clause contained in this collective agreement encompasses "all office and clerical employees in the business office of the Company in Kingston, Ontario, save and except supervisors and persons above the rank of supervisor, payroll clerks, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period";

(e) a full-time Advertising unit, which is currently covered by a collective agreement effective from January 19, 2006 until January 18, 2009. There are approximately 23 employees in this unit. The recognition clause contained in this collective agreement encompasses "all employees of the Company in Kingston, Ontario, in the Advertising and Classified departments save and except Advertising Director, Supervisors and persons above the rank of supervisor, classified Advertising Manager, Retail Advertising Manager, Multi-Retail/National & Distribution Sales Manager, Production Manager, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period"; and

(f) a part-time Advertising, Business Office and Reader Sales and Service unit, which is currently covered by a collective agreement effective from January 19, 2006 until January 18, 2009. There are approximately 3 employees in this unit. The recognition clause contained in the collective agreement provides that "the Company recognizes [the KTU] as the exclusive bargaining agent of all

> employees of the Company in Kingston regularly employed for not more than twenty-four (24) hours per week in the Advertising, and Readers Sales Departments and the Business Office, save and except supervisors, payroll clerks, persons above the rank of supervisor and students employed during the school vacation period".

7. The KTU states that the existence of six bargaining units is due primarily to historical factors. The first bargaining unit to be established at the Whig-Standard was the Composing Room, which came into existence in or around 1908 as a local of the then International Typographical Union. Computer technology has resulted in the Composing Room becoming largely defunct, and the Composing Room no longer exists as a discrete operation.

8. The KTU agrees with the Whig-Standard that what is now the full-time Editorial unit was certified by the Board on May 31, 1974, and that the original Board certificate certified the KTU:

> "as the bargaining agent of all employees of the The Kingston-Whig Standard Company at Kingston and at the District Bureaus at Brockville, Gananoque, Napanee and Picton employed in news and editorial related work, save and except publisher, editor-in-chief, private secretary to the publisher, private secretary to the editor-in-chief, managing editor, city editor, sports editor, editorial page editor, district editor, life styles editor, picture editor, persons employed for not more than 24 hours per week and students employed during the school vacation period."

9. The KTU also agrees with the Whig-Standard that what is now the part-time Editorial unit was certified by the Board on May 24, 1983, and that the original Board certificate certified the KTU as the bargaining agent for:

> "all employees of Kingston Whig Standard Co. Ltd. regularly employed for not more than twenty-four hours per week in the City of Kingston and at the district bureaus employed in news and editorial related work save and except department heads and those above the rank of department head."

10. The KTU and the Whig-Standard concur that that the full-time Mailing Room unit was certified by the Board on April 4, 1974. The original Board certificate certified the KTU as the bargaining agent for:

> "all employees engaged in mailing room work at The Kingston Whig Standard Company Limited's premises, 302-310 King Street, Kingston, Ontario, save and except circulation manager, persons above the rank of circulation manager and persons regularly employed for not more than twenty-four hours per week."

11. Furthermore, the parties agree that a part-time Mail Room unit was certified at the same time as the part-time Editorial unit on May 24, 1983. According to the original Board certificate, the KTU was certified as the bargaining agent for:

> "all employees of Kingston Whig Standard Co. Ltd. regularly employed for not more than twenty-four hours per week in the mailing room department in the City of Kingston save and except managers and those above the rank of managers."

12. The full-time and part-time Mailroom units became one unit in 1983.

13. The KTU and the Whig-Standard agree that the full-time Business Office unit was certified on February 24, 1992. The KTU was certified at that time for a unit consisting of:

> "all office and clerical employees in the business office of Whig-Standard Co. Ltd. a division of the Southam Newspaper Group in Kingston, Ontario, save and except supervisors and persons above the rank of supervisor, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period."

14. At that same time, the full-time Advertising unit was certified by the Board. The parties agree that on February 24, 1992, a certificate was issued to the KTU to represent:

> "all employees of Whig-Standard Co. Ltd. a division of the Southam Newspaper Group in Kingston, Ontario in the Advertising and Classified Departments, save and except Supervisors and persons above the rank of Supervisor, Advertising Services Supervisor, Retail Sales Supervisor, Co-op Manager, Classified Advertising Manager, Retail Advertising Manager, National Advertising Manager, Advertising Director, Advertising Director's Secretary, persons regularly employed for not more than twenty-four (24) hours per week and students employed during the school vacation period."

15. Finally, the KTU and the Whig-Standard agree that the most recent bargaining unit to be certified was the part-time Advertising, Reader Sales and Business Office unit. That unit was certified on May 17, 1996. At that time, the KTU was provided with a certificate to represent a bargaining unit consisting of:

> "all employees of The Kingston Whig-Standard, a Division of Southam Inc. in Kingston regularly employed for not more than twenty-four hours per week in the Advertising and Reader Sales Departments, save and except supervisors, persons above the rank of supervisor and students employed during the school vacation periods."

At the time of the original certification, the KTU was not recognized as the bargaining agent for part-time employees in the business office.

16. As noted above, the KTU states that the fragmentation of the bargaining relationships at the Whig-Standard is, in large part, the result of historical accident. It notes that there are many problems that result from such a fragmented bargaining structure – a failure to permit those with a true community of interest to bargain together, a lack of confidentiality for members who are located in the smaller units (such as during ratification votes, where, due to the small size of the unit, a third party observer can determine how individuals in those smaller units voted), and the potential for labour relations disruption (such as the possibility of inconsistent ratification and/or strike votes). The KTU states that some of these problems have in fact manifested themselves, and could be eliminated in the future by consolidating some of the bargaining units currently in existence at the Whig-Standard. It proposes that the full-time Editorial and part-time Editorial units be consolidated into a single Editorial bargaining unit comprising both full-time and part-time Editorial employees, and that the Board consolidate the full-time Business Office, the full-time Advertising and the part-

time Business Office, Advertising and Reader Sales units into a single unit composed of all of the employees currently in those units. The Mailing Room unit would remain unaffected.

17. The KTU states that the Board has the inherent and/or residual jurisdiction to consolidate bargaining units in the appropriate circumstances. It relies upon sections 9, 45, 111(1), 111(2) and 114 of the Act as the source of that jurisdiction, and submits that it would be appropriate in the circumstances pleaded to exercise that jurisdiction.

18. In support of that submission, the KTU cites the decisions of the Board in *BA International Inc.*, [2005] OLRB Rep. January/February 20 and *Sun Media Corporation*, [2007] OLRB Rep. May/June 649. Although the KTU acknowledges that in both of these decisions the Board exercised its discretion to not consolidate bargaining units, it submits that the decisions confirm the authority of the Board to consolidate units, by way of the jurisdiction given to it pursuant to section 114(1) of the Act to reconsider its prior decisions. It states that in *BA International* the Board acknowledged that it was inappropriate to fetter its discretion by stating that it had no jurisdiction to consolidate bargaining units, and in fact confirmed that the Board has "broad jurisdiction to vary its decisions through the reconsideration power". It also notes that the factual circumstances before the Board in *BA International* and *Sun Media Corporation* are sufficiently different than the facts pleaded with respect to the Whig-Standard, such that a different result could occur in this proceeding.

19. Counsel notes that in *Sun Media Corporation* the bargaining rights that were sought to be consolidated related to three different newspapers, one each located in Toronto, London and Ottawa. The combined unit sought in that proceeding crossed municipal boundaries, which was a difficulty for the Board. Here, the KTU requests a rationalization of units in the same newspaper, in the same departments, and in the same city. Accordingly, there is no desire to join together geographically dispersed units from different newspapers such as there was in *Sun Media Corporation*. The employees at the Whig-Standard work in and out of the same newsroom and share a true community of interest. The KTU states that, but for historical accident, there would have been created certified units largely resembling those requested by it in this application. It seeks to remedy the labour relations problems occasioned by the accidental historical fragmentation that has occurred.

20. Counsel notes that in *BA International* the applicant employer attempted to consolidate 11 bargaining units into two bargaining units, and that each of those units were represented by a different union. Here, there is no such diversity of bargaining agents. The applicant in this proceeding represents the employees in each of the six bargaining units, and it asks only that the six units be consolidated into three units. No unions would "lose out" as might have occurred in *BA International* if the Board had exercised its discretion in that proceeding, and there will be no disruption caused by a determination that the six units should be consolidated.

21. Counsel for the KTU notes in his written submissions that in both *BA International* and *Sun Media Corporation* the Board considered as significant the proposition that a party seeking the reconfiguration of bargaining units should seek to achieve that result through collective bargaining. Counsel states that the KTU is of the view that collective bargaining has already failed to address the question of consolidation, and the attendant labour relations problems that result from the multiplicity of units. He notes that bargaining unit configuration and composition cannot be bargained to impasse without the risk of inviting an unfair labour practice complaint alleging bad faith bargaining, and

therefore states that collective bargaining as a means of achieving a resolution of these issues is "without teeth" as an alternative to Board-ordered consolidation.

22. For these reasons, the KTU asserts that it has a sufficiently compelling case to potentially trigger the exercise of the Board's jurisdiction to reconsider its prior decisions pursuant to section 114(1) of the Act.

Decision

23. At the outset, it is important to note that there is nothing contained in sections 9, 45, 111(1) or 111(2) of the Act, considered individually or together, that provides the Board with the jurisdiction to combine bargaining units. The written submissions of the KTU do not provide any authority for the proposition that those sections of the Act permit the Board to make the orders requested by it. Accordingly, the request made by the KTU rests entirely on the power of the Board to reconsider its prior decisions pursuant to section 114(1) of the Act.

24. There is no doubt that the authority given to the Board pursuant to section 114(1) of the Act allows the Board to reconsider (and therefore to alter) bargaining unit descriptions contained in its previously issued decisions (and therefore the bargaining rights granted to trade unions that are reflected by Board certificates), such as those in question in this proceeding. As noted by the Board in *BA International*, cited above, the Board has not traditionally utilized its power to reconsider its prior decisions in order to re-align bargaining units after collective agreements have been negotiated. Accordingly, in the context of the motion brought by the Whig-Standard in this proceeding to have the application dismissed pursuant to Rule 39 of the Board's Rules of Procedure, the question to be answered is whether the KTU has pleaded sufficient facts to establish a *prima facie* case for the proposition that the Board might, in this case, exercise its jurisdiction to reconsider its prior decisions in order to rationalize the six bargaining units represented by the KTU.

25. The facts as pleaded do distinguish the circumstances in this proceeding from those that were before the Board in *BA International* and *Sun Media Corporation*, cited above. Some of the factors that led the Board to determine to not exercise its discretion to reconsider its prior decisions in those cases are not present in this proceeding.

26. That said, the circumstances identified in this application do reflect one critical weakness that was also present in the application brought by the applicant in *BA International*, cited above. In *BA International*, the Board made the following observations at paragraphs 6 to 8, inclusive:

> 6. The employer has cited a number of jurisdictions in Canada where labour relations boards have used their reconsideration powers to consolidate bargaining units. However, the Ontario Board has consistently declined to do so. That is not, as counsel suggests, because the Board has not acted on the potential jurisdiction, but because the Board has intentionally left for bargaining parties the power to expand or re-configure bargaining units. The Board has consistently held that once the first collective agreement has been negotiated, the certificate that was issued by the Board has been spent, and thereafter, the scope of the bargaining unit is determined by reference to the bargaining unit as the parties have defined or re-defined it in the collective agreement. The case most often cited in support of this approach is *Gilbarco Canada Ltd.*, [1971] OLRB Rep. March 155.

> 7. In cases such as *York*, [2000] OLRB Rep. March/April 371, the Board has acknowledged that an employer and bargaining agent can agree to expand a bargaining unit, and their voluntary recognition agreement reflecting such an expansion will be upheld so long as the union can show it represents the majority of the employees in the expanded bargaining unit.
>
> 8. These cases demonstrate that the Board has left to the parties the responsibility to negotiate changes to their bargaining units and to establish bargaining structures that best suit. *While, technically speaking, the Board could amend any certificate it has issued, it would have little effect because an amendment to a "spent" certificate would not touch the subsequent changes to the bargaining unit or bargaining structures that workplace parties had negotiated. Put another way, while the Board could grant the applicant's request in this case and amend the certificates issued many years ago, those amendments would not achieve what the employer really wants, which is a rationalization of its bargaining-unit structure. Those bargaining structures are a part of the collective agreements the parties have negotiated, and changes to them are matters that the Board leaves to workplace parties.* (emphasis added)

27. Shortly after the Board's decision in *BA International*, the question of the relationship between the Board certificate and the recognition clause of a collective agreement arose in *Ontario Hydro*, [2005] OLRB Rep. May/June 437. In the decision that issued in that proceeding, the Board made the following observations at paragraphs 11 through 14:

> 11. The first issue is whether the certificates issued to the Operating Engineers in 1950 continued to have any effect into the 1970's (when various accreditation orders began to be issued) or after 1978 when province-wide bargaining began. The position of the employers is that the certificates were "spent" once a collective agreement was negotiated in 1953. This theory is articulated in the oft-cited decision of *Gilbarco Canada Ltd.*, [1971] OLRB Rep. Mar. 155 at paragraph 7 as follows:
>
> > 7. At this juncture it is perhaps necessary to comment on the geographic nature of bargaining rights. It is presently the practice of this Board to grant certificates with a geographic restriction on bargaining rights. The rights thereby granted compel the parties to meet, bargain in good faith and make every reasonable effort to make a collective agreement. *The Labour Relations Act, section 12.* It is not incumbent upon the parties to incorporate into their collective agreement the bargaining rights contained in the certificate granted by this Board with the geographic limitation. The parties are free to amend, alter, extend or abridge the bargaining rights contained in the certificate. Where bargaining rights in a collective agreement are not as extensive as those contained in a certificate, then that is *prima facie* evidence of an abandonment of that portion of the bargaining rights contained in the certificate, but not contained in the collective agreement. *In effect the collective agreement supplants the rights given by the Board's certificate and the Board's certificate is spent once the collective agreement is signed. Or to put it another way the best evidence of the bargaining rights extant are those that are contained in the collective agreement.* In the same way as bargaining rights in a collective agreement supplant bargaining rights contained in a certificate so too bargaining rights in subsequent collective agreements may supplant bargaining rights contained in prior collective agreements. (emphasis added)
>
> 12. This view of the certificate (which was not new in the *Gilbarco* case) was approved by the Supreme Court of Canada in *Terra Nova Motor Inn Ltd.*, (1974) 74

> CLLC 14,253, and has been applied by the Board consistently since then: *Frito Lay Canada Limited*, [1978] OLRB Rep. Sept. 831, *Cuddy Food Products Ltd.*, [1988] OLRB Rep. Dec. 1211, *Burlington Northern Air Freight Canada Ltd.*, [1993] OLRD 945, *Francis HVAC Services Ltd.*, [1998] OLRB Rep. Nov./Dec. 958, and *BA International Inc.* (Board File No. 1363-04-M, February 28, 2005).
>
> 13. To some extent this is a reflection of section 45(1) of the Act, which provides that "every collective agreement shall be deemed to provide that the trade union that is a party thereto is recognized as the exclusive bargaining agent of the employees in the bargaining unit defined therein." If the Union's exclusive bargaining authority derives from the recognition clause of the collective agreement, then absent some other statutory or contractual provisions, it appears to leave little room for a different basis of bargaining authority (i.e. a certificate) for an identical or overlapping group of employees.
>
> 14. This development of the *Labour Relations Act* stands in contrast to the *Canada Labour Code*. The Canada Labour Relations Board, and now the Canada Industrial Relations Board, has consistently taken the view that a certificate under the Canada Labour Code has a continued existence and that the parties are not legally free to bargain a modification of those rights. Whatever the reasons for this (perhaps a common-law approach rather than a civil code approach), this Board has consistently rejected the position of the CIRB (see most recently *BA International Inc., supra*). The concept that parties with the proper authority are free to create and abandon bargaining rights now finds explicit expression in the Act. Particularly in the construction industry, the concept of a voluntary recognition is specifically addressed (for example, section 158 (3)). Voluntary recognition is fundamentally incompatible with the concept of a certificate that may not be altered and which for all time defines a union's bargaining rights. The Board's jurisprudence and the *Labour Relations Act* have rejected the concept of a certificate that has a life independent of the collective agreement.

28. Subsequently, the Board's decision in *BA International* was subject to judicial review (reported at [2005] OLRB Rep. November/December 1044). A three-judge panel of the Divisional Court unanimously dismissed the application, and made the following observations regarding the decision of the Board:

> 11. ... The language of s. 114 is permissive, not mandatory. It does not state that the Board "shall" reconsider their decisions, but only that they "may". The Board considered whether it would exercise its discretion to consolidate the bargaining units and, for the policy reasons set out above, it declined to do so. In so doing, it did precisely what the Legislature empowered it to do.
>
> ...
>
> 23. The decision of the Board was based on factors outlined in para. 8 above. To the extent that it involves matters of fact and policy, the decision is a rational one, in that the conclusion arrived at has a rational connection to the reasons offered in support of it. *To the extent that it involves matters of law, i.e. the concept that a certificate is "spent" once a collective agreement is entered in to, it has a sound basis in law traceable to the decision of Chief Justice Laskin in* Terra Nova Motor Inn Ltd., *74 CLLC para. 14, 253, and is consistent with 34 years of Board jurisprudence.* (emphasis added)

29. Turning to the circumstances before the Board in this proceeding, the Board does have the authority, pursuant to section 114(1) of the Act, to amend any decision that it has previously issued certifying an applicant. The Board would be prepared to do so in an appropriate case (an obvious example being when the parties consent to such amendment). However, to do so in the circumstances before the Board in this proceeding would have no meaningful effect.

30. The KTU and the Whig-Standard have had a long-standing bargaining relationship that goes back at least 34 years. Board certificates that were issued in the 1970's, the 1980's and the 1990's have been supplanted by numerous collective agreements negotiated by the parties. Similar to the situation before the Board in *BA International*, any amendment that the Board might effect to the certificates previously granted in favour of the KTU "would not touch the subsequent changes to the bargaining unit or bargaining structures that the workplace parties had negotiated". That is, the collective agreements which now govern the relationship between the parties would not be affected by any amendments to the Board's initial decisions and the certificates granted pursuant to those decisions, because those certificates are now spent. The collective agreements stand independently on their own accord, and the certificates have no significance to the ongoing relationship between the KTU and the Whig-Standard. The Divisional Court confirmed in *BA International* that the Board's view that a certificate is spent once a collective agreement is entered into "has a sound basis in law". Furthermore, the Board does not have the statutory authority in the circumstances before it to alter the recognition clauses of the current collective agreements between the KTU and the Whig-Standard. As a result, reconsidering the Board's initial decisions will provide no relief to the KTU whatsoever.

31. When one compares the wording of the certificates initially granted by the Board to the KTU with the wording contained in the recognition clauses of the current collective agreements, it becomes evident that over the course of time the parties to this proceeding have negotiated changes to the scope of the bargaining units initially reflected by the Board certificates. In fact, as noted above the full-time and part-time Mailroom units were consolidated by the parties into one unit in 1983.

32. Presumably both the KTU and the Whig-Standard have benefited over the years from the ability to freely negotiate recognition provisions that better reflect the changing shape of the newspaper business in Kingston. Although the KTU may have been unsuccessful in recent attempts to negotiate consolidated units with the Whig-Standard, and it is accurate to state that a party to a collective agreement cannot lawfully bargain the unit configuration to impasse, the parties to these bargaining relationships have previously made significant revisions to the recognition clauses reflected in the current collective agreements to which they are bound as part of the usual "give and take" of collective bargaining. In my view, the changes sought by the KTU are most appropriately achieved at the bargaining table rather than in a hearing room.

33. It is evident that even if the Board were to accept as true all of the facts pleaded by the KTU and determine to reconsider its prior decisions pursuant to section 114(1) of the Act, those reconsidered decisions would not provide the KTU with the relief it seeks. As a result, this application must be dismissed.

0913-08-M Labourers' International Union of North America, Local 1059, Applicant v. **Martin Building Maintenance**, Responding Party

Discharge – Interim Order – Unfair Labour Practice – The union sought interim reinstatement of five employees, pending resolution of the main application which alleged that they were discharged for union activity – The employees worked as cleaners in a plant under construction, and were dismissed when the construction was completed – The Board held that the employees appeared to have been dismissed for their earlier union activity, because there was no other reasonable explanation for their dismissal – Although the construction work was over, the employer by its own admission needed many cleaners to work in the finished plant, and these employees were already trained and gave no cause for dismissal – The Board held that the discharges occurred during an organizing campaign; there was a serious issue to be tried; a failure to reinstate the workers would irreparably harm the union; and the reinstatement would not harm the employer – Interim order granted

BEFORE: *Brian McLean*, Vice-Chair.

APPEARANCES: *L. A. Richmond, B. MacKinnon* and *J. Shroyer* for the applicant; *George Wallott, Matthew Dewar, Manny Silva, Sue Griffith, Darlene Lubrick, Dan Alden* and *Tracy Moran* for the responding party.

DECISION OF THE BOARD: July 17, 2008

1. This is an application for interim relief brought pursuant to section 98 of the *Labour Relations Act, 1995* (the "Act"). The application for interim relief and an application under section 96 of the Act (the "main" or "pending" application in Board File No. 0879-08-U) were filed by the union with the Board on June 18 and 17, 2008 respectively.

2. In the main application, the applicant seeks, amongst other remedies (including certification under section 11 of the Act), the reinstatement to employment of five terminated employees: Sherri Hogben, Nancy Gamble, Catherine Loft, James Poore and Jennifer Halashewski. The union asserts that these employees were discharged because of their membership in the union. In the application for interim relief, the union seeks amongst other remedies, the reinstatement of the five employees pending adjudication of the unfair labour practice complaint in the main application.

3. The employer resists both applications.

4. For reasons which follow, the interim relief application is granted in part. The five employees are reinstated to employment with the employer.

5. In accordance with the Board's rules I heard this application by way of consultation. I also heard some oral evidence from one individual, as will be described below.

Background

6. The union has a collective bargaining relationship with the employer in a number of bargaining units both construction and industrial. On November 19, 2007 the union applied for certification of a bargaining unit of employees of the responding party (the "first certification application") as follows:

> all employees of David Martin Enterprises (London) Limited engaged in cleaning and building services employed at Toyota Motor Engineering and Manufacturing North America, Inc., 71506 Oxford Rd. #4, Woodstock, Ontario, save and except supervisors, persons above the rank of supervisor and office staff.

7. The employees which the union sought to represent in the first application were cleaners at a construction site where a new Toyota automobile plant was being built. The employer had the cleaning contract for both the construction cleaning and for the Toyota plant cleaning after the construction was completed.

8. The employer responded to the application. In its response, the employer took the position that the application ought to be dismissed because the employees in question were working in the I.C.I. sector of the construction industry. The union held province-wide bargaining rights for the employer in the I.C.I. sector and the parties had never treated the cleaning employees as falling under that collective agreement. The employer's alternate position was that any representation vote ought to be deferred pending an anticipated "build up" in the workforce.

9. It is worth noting that the employer's defence to the union's industrial application for certification – that the employees in question were in the construction industry – resulted in the employees being covered by the union's I.C.I. provincial collective agreement, with the employees entitled to the wages and benefits provided for in that agreement. To put it another way, the employer was prepared to give the cleaning employees an approximately $17.00 per hour wage and benefit increase to avoid being certified for an industrial bargaining unit at the location.

10. The employer filed written submissions in connection with the application. The submissions regarding "build up" are relevant to this application:

> **1. Build up**
>
> The responding party says that at the very least the seven individuals who have worked on site (the three who are not in dispute, the three challenges above and Ms. Lockyear) will all be working on site once the factory has been completed in or about April. This can be said with a high level of confidence. Accordingly, there is clear evidence already that less than a majority of the individuals effected by the decision had had the right to vote. Further, and more importantly, there is a commitment in place from Toyota to a significant expansion of the number of employees in the unit once the facility "ramps up".
>
> While the exact staffing plans are contingent upon a construction timetable and operational needs, the parties expect that, based on the experience with the "ramp up" at Toyota Cambridge, approximately 20 to 25 cleaners will be working for Martin Building Maintenance on site in or about April. This group of employees have a right to express their wishes.
>
> A number of the employees who work for the responding party at the Toyota Cambridge site have been specifically trained, oriented, and hired with the opening of the plant in mind. Martin held a job fair at the Quality Inn in Woodstock on September 14, 2007. Employees were interviewed and advised that there would be work available in the area in the near future. A newspaper advertisement was placed, and there were 21 people who responded. Interviews for work in Woodstock have continued since the job fair.

> Consistent with the "ramp up" planned when Martin was awarded the Woodstock contract in July, additional employees have continued to be added to the site. As of January 14, 2008, additional persons not on the list now working on site are: James Poore, Cathy Loft, and Jennifer Halashewski. Ms. Halashewski worked for Martin in Cambridge before going on maternity leave. During her leave, she indicated that, if she were to return to work, she would prefer to be assigned to work in Woodstock. Martin was advised on or about December 24 that Ms. Halashewski was ready to return to work on January 14. She has been working in Woodstock since that time.
>
> Based on the employee numbers at the Toyota Cambridge facility, the responding party expects the following employee numbers in Woodstock:
>
> January 14: 8
>
> February: 10
>
> March: 15
>
> April: 20
>
> September (plant production opening): 50 (This number may be higher, since the current employee complement in Cambridge is approximately 75).
>
> In the circumstances, the vote already concluded ought to be counted. If there is not sufficient support, the application should be dismissed. If there is sufficient support, a second vote should be held once the plant is operational.

11. In January 2008 the union conceded that the employees in question were at work in the I.C.I. sector of the construction industry and the application was dismissed by decision of the Board dated January 18, 2008.

12. Immediately subsequent to the dismissal of the first certification application, the union filed a grievance to ensure that the employer applied the I.C.I. collective agreement to the cleaners. The employer agreed to do so and each cleaner there employed was given until February 4, 2008 to join the union.

13. There are a number of allegations about what was said to employees by representatives of the employer around this time. However, they are in dispute, and I disregard them for the purposes of determining this application.

14. As a result of the requirement that the cleaning employees join the union, a number of them signed applications for membership on February 4 and 5, 2008. New employees were referred by the union through its hiring hall.

15. It is not disputed that there was a general understanding among the parties and in the workplace that at some point in the not too distant future the construction phase of the Toyota plant would end. Thereafter, the employer would provide industrial cleaning services to Toyota and likely a number of additional cleaning employees would be hired. In fact on June 13, 2008 the construction project came to an end.

16. On June 13, 2008 the employer terminated the employment of all of the cleaning employees on the site. (Among those terminated were some employees referred by the union through its hiring hall. The union does not seek interim reinstatement orders with respect to these employees). The union alleged that there were anti union statements made by the employer's management at the time of the terminations. The employer disputes these statements and I have not taken these allegations into consideration in making this decision. On June 16, 2008 the employer brought in a whole new crew of employees to perform non-construction cleaning.

17. On June 17, 2008 the union filed an application for certification (Board File No. 0880-08-R) with respect to the following bargaining unit:

> all employees of Martin Building Maintenance engaged in cleaning and building services employed at Toyota Motor Engineering and Manufacturing North America, Inc., 71506 Oxford Rd. #4, Woodstock, Ontario, save and except supervisors, persons above the rank of supervisor and office staff.

18. In its response to the second certification application the employer again took the position that no representation vote should be ordered because of an impending "build up" in the workforce. The employer stated:

> 7. The Responding Party says that a substantial number of individuals will be soon working on site, and their wishes regarding union representation ought to be considered.
>
> 8. There is a high level of certainty to the fact that there will be at least 40 cleaners working on site once the Toyota Woodstock plant is fully operational. Accordingly, there is clear evidence already that less than a majority of the individuals effected by the decision will have the right to vote.
>
> 9. While the exact staffing plans are contingent upon operational needs, the parties expect that, based on the experience with the "ramp up" at Toyota Cambridge, approximately 30 cleaners will be working for Martin Building Maintenance on site in or about September. This will rise to at least 40 cleaners in or about November.
>
> 10. These numbers may be higher, since the Responding Party's employee complement at Toyota Cambridge is approximately 75 cleaners.
>
> 11. This group of employees have a right to express their wishes.
>
> 12. In accordance with the "ramp up" plan, a number of the employees who work for the Responding Party at the Toyota Cambridge site have been specifically trained, oriented, and hired with the opening of the plant in mind. Employees have been interviewed and advised that there would be work available in the area in the near future.

13. In the circumstances, the Responding Party says no vote should be conducted until September at the earliest.

19. A representation vote was held in the second certification application. The ballot box was sealed because the employer gave the Board potentially relevant notice under section 8.1 of the Act. Those who cast ballots were the terminated employees and the newly hired industrial cleaners.

Decision

20. Section 98 states:

> **98.** (1) On application in a pending proceeding, the Board may,
>
> (a) make interim orders concerning procedural matters on such terms as it considers appropriate;
>
> (b) subject to subsections (2) and (3), make interim orders requiring an employer to reinstate an employee in employment on such terms as it considers appropriate; and
>
> (c) subject to subsections (2) and (3), make interim orders respecting the terms and conditions of employment of an employee whose employment has not been terminated but whose terms and conditions of employment have been altered or who has been subject to reprisal, penalty or discipline by the employer.
>
> (2) The Board may exercise its power under clause (1)(b) or (c) only if the Board determines that all of the following conditions are met:
>
> 1. The circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway.
>
> 2. There is a serious issue to be decided in the pending proceeding.
>
> 3. The interim relief is necessary to prevent irreparable harm or is necessary to achieve other significant labour relations objectives.
>
> 4. The balance of harm favours the granting of the interim relief pending a decision on the merits in the pending proceeding.
>
> (3) The Board shall not exercise its powers under clause (1)(b) or (c) if it appears to the Board that the alteration of terms and conditions, dismissal, reprisal, penalty or discipline by the employer was unrelated to the exercise of rights under the Act by an employee.
>
> (4) Despite subsection 96 (5), in an application under this section, the burden of proof lies on the applicant.

...

(6) This section applies only in respect of an alteration of terms and conditions of employment or a dismissal, reprisal, penalty or discipline that occurred on or after the day section 7 of the *Labour Relations Statute Law Amendment Act, 2005* comes into force.

21. As the employer points out, in order for the union to succeed it must satisfy all of the five requirements in subsection (2) and (3) of section 98. It is appropriate to analyze whether it accomplished this in the order in which the requirements appear in the section.

Did the Termination Occur During An Organizing Campaign?

22. The employer disputes that the union was engaged in an organizing campaign at the time the employees were terminated. Its theory can be succinctly stated: The employees were required to join the union in February 2008 as a result of the parties' agreement that the union's I.C.I. collective agreement applied to them. Thereafter, the union did nothing until the employment of the employees was terminated, whereupon it immediately filed an application for certification. On this theory, there was never an organizing campaign as employees signed cards only as a result of a requirement to do so and the union had to do nothing more.

23. With its application the union filed a declaration of Jesse Shroyer, the union's organizer in both applications for certification. Mr. Shroyer declared that the organizing campaign commenced in November 2007 and continued to June 2008 and beyond as he maintained contact with employees in order to maintain the membership support in anticipation of a representation vote in an industrial unit once the construction ended.

24. The employer disputed Mr. Shroyer's declaration. As a result, I directed that Mr. Shroyer be available for cross-examination on his declaration with respect to the narrow issue of whether the union was engaged in an organizing campaign at the time of the terminations.

25. In cross-examination Mr. Shroyer testified that he had some employees sign membership cards in April and in June (but not after June 13) in addition to these cards signed by the majority of employees in February. He also had several telephone calls and visits with employees in which he answered their questions about the process. He visited the workplace to determine if new cleaning employees were being hired. His goal was to ensure that the employees would support the union in a representation vote.

26. In addition, Mr. Shroyer testified that he went to a job fair run by the employer in early June 2008 at which he applied for employment in the company. The purpose of him doing so was to gather information about the company's intentions; he had heard that the company was hiring a number of new employees to work at Toyota. He testified that his plan all along was to file an industrial application for certification as soon as the construction project ended and that he stayed connected to the workplace so that he could know when this occurred.

27. I have no hesitation in finding that the circumstances giving rise to the pending proceeding occurred at a time when a campaign to establish bargaining rights was underway. There is no doubt that the campaign did not have the hallmarks of a typical organizing drive. That is because most of

the employees signed union cards in February 2008 and others were union members referred by the hiring hall. Nevertheless, the union's activities constituted an organizing campaign. The union was in contact with the employees in order to prepare them and gather their support for the impending and anticipated representation vote; the union was engaged in intelligence gathering to determine the employer's intentions; and the union planned to file an application for certification as soon as the construction project ended. The act of convincing people to vote in favour of the union is as much organizing activity as is convincing them to sign membership cards.

Serious Issues to be Decided

28. The employer also argues that there is not a serious issue to be decided in the pending proceeding. I reject this argument. The termination of all of the employees is clearly a serious issue. This is reinforced by the fact that even on the employer's best case, it can be easily inferred the termination of these employees was related to the fact that they obtained rights under the I.C.I. collective agreement. The employer has advanced no business or human resources justification for the termination of the employees.

Irreparable Harm or the Achievement of Significant Labour Relations Objectives

29. The employer argues that there is no labour relations harm to the individuals which is irreparable because if the terminations are ultimately found to have been improper, the employees can be compensated with damages. As for the union, the employer says, it has suffered no irreparable harm as the representation vote has already been held and the ballots are in the box. If another vote is found to be required, the Board can make such orders as are necessary, after hearing all of the evidence, to ensure that a second vote is conducted fairly.

30. There is some suggestion in the case law that once a vote has been held, there is no irreparable harm to the union. In *Ontario Hydro*, [1996] OLRB Rep. September/October 826 the Board stated in the context of a complicated dispute between two unions which resulted in the displacement of one trade union by another:

> 68. Further, although the harm being alleged by the applicants had broader labour relations elements in it, it was primarily personal so far as the individual applicants are concerned. If there is one thing that is clear from the Board's interim jurisprudence, it is that the interim power is to be used for labour relations reasons, not personal ones, however significant these may seem to be to the individuals involved. Accordingly, it will generally be inappropriate for the Board to grant interim orders with respect to personal harm issues (see, for example, *Morrison Meat Packers Ltd.* [1993] O.L.R.B. Rep. April 358). This is particularly true where, as I am satisfied is the case here, any harm which may be suffered by the individuals can be remedied if the applicants are ultimately successful. In that respect, I reject the applicants' assertions that it will be impossible to fashion appropriate remedies for the seniority rights problems, although I do not deny that some difficulties may be presented.
>
> 69. Nor was I persuaded by the applicants "chilling effects" arguments with respect to the PWU's applications for certification. Those applications have been made and representation votes have been held (although the ballot boxes have been sealed pending the outcome of the litigations of various issues, which litigation has progressed much more slowly than anyone involved, including myself as the Vice-

> Chair seized with that litigation, would like). It is not at all clear what chilling effect, or other harm, which has not yet occurred in any event, there could be here in that respect, and it is insufficient to establish a labour relations harm which would form an appropriate basis for the interim orders sought.
>
> 70. On the other hand, I was satisfied that granting the orders sought could create significant labour relations problems for the collective bargaining parties whose conduct is challenged by the applicants, by upsetting the collective bargaining balance they have sought to achieve, and could at the same time have the same kind of negative impact on members of other IBEW Locals which the applicants complain of.

31. In my view the circumstances in *Ontario Hydro* are distinguishable. The harm alleged to have been done in this case is not just personal harm to the employees. By eliminating *all* of the existing employees, the employer harmed the union. The union's connection to the workplace has been severed. In view of the discharges, new employees hired by the employer will likely be (and according to Mr. Shroyer's declaration have been) reluctant to contact the union.

32. The Board has consistently held that the termination of union organizers results in irreparable harm to the union. In my view, the termination of the entire bargaining unit is even worse. What could be more chilling than that?

33. Moreover, although a vote has been held there is a possibility that a new vote could be ordered as a result of a determination under s.11 of the Act or as a result of a finding that, as the employer urges, a new vote should be ordered as a result of a "build up" in the workforce.

34. Finally, there will also be harm to the integrity of the bargaining unit. Time will pass while the Board hears evidence and makes its determination. The employees are cleaners. They have job mobility. Some or all may well have found other jobs by the time this is completed. Their connection to the workplace will inevitably wane over time.

Balance of Harm

35. The employer argues that an assessment of the balance of harm also favours denial of the interim order. It asserts the employer will be harmed if the employees are reinstated and that granting interim relief would be tantamount to granting final relief in this case, which is not appropriate. The industrial cleaners currently on site would be displaced which would create "serious challenges" if the union's s.96 complaint fails. (However, the employer does not describe what these serious challenges are). The employer also says: "If the terminated employees are reinstated, that will provide the Union momentum, and likely will assure them success in becoming certified".

36. I see little merit in the employer's arguments. In my view little or no harm would attach to the employer if the order is granted. There is no suggestion that the terminated employees are not fully capable of performing the industrial cleaning duties. They are the same or similar duties as they were performing prior to their termination. In fact it is apparent that some or all of these employees were hired with the idea that they would perform these duties. Finally, the employer's build up argument is that it will need many more additional cleaners in the coming weeks and months.

Do the Discharges Appear to be Unrelated to the Exercise of Rights Under the Act?

37. The employer argues that there is no evidence that it was even aware of any organizing campaign (and given the limited scope of the campaign, this must be true), let alone any evidence that the terminations were as a result of anything but the fact that the construction work came to an end. Quite simply, according to the employer, there was no further construction work for them to do and they were simply referred back to the union hiring hall just like would be done with any other construction labourer.

38. The Board's determination under s.98(3) is based on the "appearance" of the material before it, not on a finding of fact. In this case there are ample agreed facts on which it appears to the Board that the termination of the five employees was related to their exercise of rights under the Act.

39. The starting point of my analysis is the submissions filed by the employer in connection with its build up argument in the first certification application. The employer's submissions state that the seven individuals who worked on site "will all be working on site once the factory has been completed in or about April" [which was the expected completion date at that time]. Among the seven employees referred to by the employer and one of the three employees agreed in the unit was Sherri Hogben. In addition, among the seven employees (although not agreed in the unit) were James Poore, Catherine Loft and Jennifer Halashewski who the employer asserted were employed as part of the "ramp up" in anticipation of the changeover from a construction site to a operating factory. In other words, in January 2008 the employer was arguing that four of the five terminated employees were going to be employed in the Toyota plant as industrial cleaners and in the industrial bargaining unit.

40. Similarly, the employer again took the position that there would be a build up in the second application for certification. It anticipates that there will be thirty cleaners required to do cleaning at the factory by September 2008. All of these employees will be in the industrial bargaining unit.

41. These appearances are reinforced by the declaration filed by Sue Griffith, a manger in the employer's operations department who was responsible for the employees affected by this application. With respect to Sherri Hogben Ms. Griffiths declared: "I also advised Hogben that once the Toyota Woodstock Plant opened up, she would get full time hours depending on customers needs. At no time did I advise Hogben that she would be guaranteed employment once the Plant commenced its operational, industrial phase. With respect to Ms. Gamble, Ms Griffiths declared: "Nancy Gamble commenced employment in or around October 2007 at our temporary office with a typical workday of 6.5 hours. This was considered training in preparation for the opening of the Plant. At no time did I advise Gamble that she would be guaranteed employment once the Plant commenced its operational, industrial phase". With respect to Catherine Loft, Ms Griffiths declared: "I hired Catherine Loft on or about September 21, 2007. I advised her that she would begin working and training [at another location] but would be transferred to the Plant once a position became available. At no time did I indicate that the position at the Plant was a permanent, full time position".

42. The employer's plans which are described in its submissions and materials beg the question: if the employer has a need for a number of additional cleaners at the Toyota facility, why were these employees terminated? The employer's explanation, that the construction work was over, simply does not make business sense. The employer hired and trained a whole new group of

employees who started work on the first business day after the union members were terminated. It strongly appears to me that had these employees not joined the union they would have been retained by the employer following the construction phase. Based on the employer's own materials that appears to have been the plan (even if there was no "guarantee" of such work) and there appears to be no event, other than the union activity, which explains how this plan was not followed through. This alone justifies a finding of an appearance that the dismissal was not unrelated to the exercise of rights under the Act under section 98(3).

43. More than that, even if the employer was not aware of the union's specific plans about filing an application for certification or its organizing activity, it appears that the employer must have been aware that the union desired to represent its employees at Toyota. The union had recently made an application for certification for that very bargaining unit. The employer defeated that application by asserting that the employees fell under the ICI collective agreement and in doing so increased the pay of the cleaning employees by a large margin. It is more likely than not that the employer understood that if it retained these employees to work at the industrial plant, they would become the base of support for a new application for certification.

Disposition

44. For all of the foregoing reasons the Board finds that the union has demonstrated that the conditions set out in section 98 of the Act have been met and that an interim reinstatement order is appropriate. The Board Orders Martin Building Maintenance to:

a) reinstate Sherri Hogben, Nancy Gamble, Jennifer Halashewski, Catherine Loft and James Poore to their employment by no later than Monday July 28, 2008. To be clear, the employees are to be reinstated to full time industrial employment on the same terms and conditions of employment as are enjoyed by the existing industrial cleaners;

b) refrain from suspending, discontinuing or otherwise terminating Sherri Hogben, Nancy Gamble, Jennifer Halashewski, Catherine Loft and James Poore's employment until the Board issues a final decision in the unfair labour practice complaint except with the consent of the union or the Board;

c) post a copy of this decision where the terminated employees and other industrial cleaners at the Toyota plant are likely to see it and keep it posted for not less than thirty days.

1193-08-G Universal Workers Union, Labourers' International Union of North America, Local 183, Applicant v. **North Rock Group Ltd.**, Responding Party

Construction Industry Grievance – Practice and Procedure – Reconsideration – Settlement – The applicant sought reconsideration of a default award because the parties failed to advise the Board of a settlement they had reached prior to the issuance of the default decision

– The applicant had originally sought a default decision if the responding party did not file an Intent to Defend, and no such filing occurred – The Board reconsidered its decision but admonished the parties for failing to advise the Board of their settlement, causing the Board to expend time and resources to review a file and issue an unnecessary decision – Reconsideration granted; application withdrawn

BEFORE: *Lee Shouldice*, Vice-Chair.

DECISION OF THE BOARD; July 25, 2008

1. This is a referral of a grievance to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended (the "Act"). By way of decision dated July 24, 2008, certain findings of fact, declarations and orders were made by default as a result of the failure by the responding party to deliver and file a Request for Hearing and Notice of Intent to Defend/Participate ("Request for Hearing"). The applicant had indicated on the face of its Referral to Grievance that it desired the Board to determine the referral without a hearing should the responding party fail to deliver and file a Request for Hearing.

2. The decision dated July 24, 2008 was faxed by the Board to the parties early yesterday afternoon. Shortly thereafter, counsel for the applicant wrote to the Board indicating that the underlying grievance had been previously resolved by the parties. The Minutes of Settlement appear to have been achieved without the assistance of a Board Officer. Counsel for the applicant requested in his correspondence that the Board revoke its earlier decision and replace it with a decision withdrawing the application.

3. In effect, the applicant is requesting that the Board reconsider its initial decision pursuant to section 114(1) of the Act and substitute another decision in its place. The Board has indicated previously that the authority to reconsider its prior decisions in proceedings under section 133 of the Act should be exercised by reference to factors different than those normally applied in Board proceedings (see *Weinmann Electric Limited*, (2000) CanLII 11928, at paragraph 6). In circumstances such as these, where the beneficiary of a default decision requests that the Board reconsider its prior decision and substitute terms resulting from a mutually acceptable settlement, the Board will typically grant that request and reconsider its prior decision. The Board is prepared to do so in this proceeding.

4. This is the second time within the past two days that an applicant has requested the Board to reconsider a default decision on the grounds that a settlement of the underlying grievance had been achieved, but had not been communicated to the Board sufficiently in time to preclude a default award from being issued. In *MWS Solutions Inc.* (Board File No. 1149-08-R, decision dated July 23, 2008) this panel of the Board made the following observations regarding this situation:

> 5. Finally, the Board believes it appropriate to make the following observations regarding the carriage of this proceeding by the applicant. The Minutes of Settlement enclosed with counsel's correspondence reflect that a settlement of the grievance was completed on July 16, 2008, five days before the prior decision was issued. The applicant had asked that the Board issue a default decision in the absence of the responding party delivering and filing a Request for Hearing, and was aware that no such Request for Hearing had been delivered by the responding party because of the settlement that had been reached. In these circumstances, the applicant ought to have advised the Board immediately that a settlement

> of this proceeding had been reached. If it had done so, much of the time, effort and expense that was unnecessarily incurred by the Board to prepare and release the default decision would have been avoided.
>
> 6. As noted by the Board in *Weinmann Electric Limited*, cited above, the process that has developed to administer section 133 of the Act is based on a need for expedition, so as to ensure that rights are determined in a manner that has both a practical and legal value. When a panel of the Board and Board staff are unnecessarily engaged in dealing with a matter that has been settled almost a full week earlier, time that could have been spent engaged dealing with other proceedings is lost, and financial costs that could have been avoided are incurred. Out of a basic level of respect for the Board, its staff and the other parties that utilize the Board's processes, in the future the parties should ensure that settlements of this nature are immediately brought to the Board's attention once they are reached.

5. The same observations made in the *MWS Solutions* decision apply equally to this proceeding. The Board always supports the efforts made by parties to resolve grievances prior to the scheduled meeting with a Board Officer (particularly ones such as the instant grievance, which involved an employee's loss of employment). However, if no Request for Hearing has been delivered by the responding party, reaching a settlement does *not* end the process if the applicant has requested that a default decision be issued. In these circumstances, once a settlement is achieved, the parties *must* immediately communicate to the Board (either on their own accord or through their legal counsel) that a settlement has been reached. Doing so is a matter of common courtesy and ensures that the finite resources of the Board are not wasted.

6. The decision dated July 24, 2008 is hereby revoked pursuant to section 114(1) of the Act, and this application is withdrawn at the request of the applicant. The hearing scheduled for August 8, 2008 is hereby cancelled.

1113-08-R Service Employees International Union Local 1 Canada, Applicant v. **Nutra Services Inc.**, Responding Party

Bargaining Unit – Certification – Practice and Procedure – Union applied for an all employee unit where the employer had two operations: a nursing home and retirement home – Employer argued that only a two bargaining unit structure was appropriate – After the ballots were counted, a majority of employees in the nursing home voted in the union's favour, while the employees in the retirement home and all employee unit were against the union – The parties then adopted each others' positions – The Board permitted the change of positions, following *Martha's Garden* and *Morrow Transport* and noted that change of position cases are rare and are a natural outcome of the Board's processes which are designed to ensure that certification cases get dealt with quickly, effectively and without the requirement of unnecessary litigation – Finally, the Board found that a two-unit structure was appropriate (particularly given that the employer had argued, albeit at different times, that both an all employee and a two unit structure were appropriate) – Application granted, in part

BEFORE: *Brian McLean*, Vice-Chair, and Board Members *J. A. Rundle* and *D. A. Patterson*.

APPEARANCES: *Bill Hulme* appearing for the applicant; *Ryan Wood* appearing for the responding party.

DECISION OF THE BOARD: August 21, 2008

1. This is an application for certification. The Board held a hearing on August 11, 2008 with respect to the one issue which remains in dispute, that being the determination of the appropriate bargaining unit. The parties also filed written submissions. This decision determines that issue.

2. The facts which give rise to the dispute are somewhat unusual and are as follows.

3. On July 8, 2008 the union applied for certification of an "all employee" unit of the employer at its location at Villa Care Centre in Midland. The employer is a food services provider. At the Villa Care Centre the employer has two operations which reflect the fact that the Villa Care Centre is divided into a nursing home regulated under the *Nursing Home Act* and a retirement home which is not licenced under that Act. The food services for the retirement home and nursing home are operated mostly separately for financial and regulatory reasons.

4. On July 10, 2008 the responding party filed a response to the application for certification. In its response the employer disagreed with the number of employees in the bargaining unit applied for (the "all employee unit") and said that bargaining unit which the union applied for could not be appropriate. The employer took the position that only a two bargaining unit structure – one unit of the employees at the retirement home and one unit of the employees at the Nursing Home – were appropriate. It gave notice under section 8.1 of the Act and filed extensive written submissions in support of this position.

5. By decision dated July 11, 2008 the Board ordered that a representation vote be held. The Board ordered that the ballots be cast and counted separately between the two operations. With respect to the employer's section 8.1 objection the majority of the panel held:

> 4. The responding party disputes the applicant's estimate of the number of employees in the applicant's proposed bargaining unit. Furthermore, the responding party contends that the applicant's bargaining unit could not be appropriate and proposes two separate bargaining units. It gives notice under section 8.1 of the Act and requests that, consistent with its position that there should be two bargaining units, the section 8.1 assessment be made on each distinct unit. However, subsections 8.1(5)3 and 8.1(5)4 are clear that the 8.1 determination is to be made with regard to the number of employees in the bargaining unit included in the application for certification only, once the Board finds that the bargaining unit described in the application could be appropriate.
>
> 5. In this instance, the Board finds that the bargaining unit described in the application could be appropriate. After comparing the membership evidence provided by the applicant against the information provided by the responding party, the Board finds that the numerical difference between the parties is not significant. The applicant has established sufficient

> membership support in its proposed bargaining unit for the purposes of obtaining a representation vote and having that vote counted.

Board Member Rundle dissented on this aspect of this decision. She would have sealed the ballot box pursuant to section 8.1(4) of the Act.

6. The representation vote took place on July 15, 2008. The ballots were counted. A majority of employees in the nursing home voted in favour of representation by the union while a majority of the employees in the retirement home voted against representation by the union. Critically, the results of the vote were such that a majority of employees in the "all employee" unit voted *against* representation by the union.

7. Based on the results of the vote, the parties' each adopted the position of the other party regarding the appropriate bargaining unit. The employer now asserts that a single all employee bargaining unit is appropriate and the union asserts that two units are appropriate.

Decision

8. A useful starting point for the discussion is section 8.1 of the Act, since both sides touched on it in their oral submissions before us. The union takes the position that its application *via a vis* the retirement home group of employees ought to be dismissed under section 8.1 of the Act and, therefore, a "bar" should not be imposed on a further application for certification with respect to these employees. The employer submits that the Board was wrong not to have sealed the ballot box in the first place. If the ballot box had been sealed the parties would not have been able to know the outcome of the vote and could therefore not engage in the change of positions which the board now faces.

9. We deal first with the union's position. In our view it must fail. It is clear that the Board's analysis under section 8.1 of the Act is to be made on the basis of the bargaining unit set out in the application unless that unit could not be appropriate. In this regard section 8.1(5)3 is clear:

> **8.1** (5) The following apply if the Board receives a notice under subsection (1):
>
> ...
>
> 3. Unless the Board dismisses the application as allowed under paragraph 2, the Board shall determine whether the description of the bargaining unit included in the application for certification could be appropriate for collective bargaining. *The determination shall be based only upon that description.*
>
> (emphasis added)

(See *Morrow Transport Inc.* [1999] OLRB Rep. May/June 434).

10. In this case, the Board, in its July 11, 2008 decision has already decided, on an assessment of the bargaining unit applied for, that the "all employee" "could be appropriate" and that the applicant enjoyed the support of more than 40% of employees in that unit. After that decision the

section 8.1 issue was no longer live. The section 8.1 objection has been disposed of and cannot be revived. Therefore, any dismissal would not be made under section 8.1 of the Act.

11. The employer position, while no longer a live issue, is worth a response. Whatever, its origins, section 8.1 of the Act is not primarily a section about bargaining units. It is a section which deals with support for the union within the unit applied for, or, where that unit could not be appropriate, within a unit determined by the Board. It is also important to note that there are frequently disputes about bargaining unit descriptions in applications for certifications before the Board. Even though these disputes may result in the kind of change of position which occurred here, the Board seldom, if ever, orders the ballot box sealed for that reason. (I note, however, that the officer at the vote may seal the ballot box if there are too many disputes as to employees' status that cannot be easily categorized).

12. There is no doubt that the Board had the authority to order the ballot box sealed under section 8.1 of the Act. However, to do so would have been contrary to its now long standing practice to count ballots when it is apparent that the union has the support of more than 40% of employees in the bargaining unit applied for. What would have been the reason to act contrary to that long-standing policy? The possibility that the counting of ballots might result in the parties switching positions does not seem a good reason given the Board's general practice to routinely count ballots even in the face of such circumstances, which exist in every case where the bargaining unit description is in dispute.

13. The Board has faced "change of position" situations like this before. The Board's practice is to ignore the switch of positions as the underlying issue in dispute remains live. In *Martha's Garden Inc.* [1977] ORLB Rep. September/October 841, the Board stated in slightly different circumstances:

> 9. The Board's oral ruling merits one significant clarification. The reference to parties' abilities or entitlement to "change their position" needs to be read fairly narrowly. The two parties here did not merely change their positions; they each adopted the position formerly held by the other. Thus, while the positions adopted were new to the parties adopting them, they were not new to the process. These were positions that had already been articulated. This was not a situation where a party apparently losing or winning the representation vote suddenly comes up with challenges or additions to the voters' list not previously raised by anyone. That kind of situation is to be readily distinguished from the instant one which some might cynically describe as the parties racing, for reasons no doubt closer to self-interest than epiphany, to embrace each other's position.

(See also *Morrow Transport, supra).*

14. The employer's written submissions, echoed in its oral submissions, can be summarized into the following paragraphs from the written submissions:

> The Applicant Union maintained its proposed single bargaining unit description from the time of filing its Application for Certification to immediately after the counting of the ballots cast in the Vote ordered by the Board. It was only after the count that the Applicant reversed its position of a single bargaining unit to two separate bargaining units, as originally proposed by the Responding Party.

> Why did the Applicant change its position? The reason is clear and indisputable. The Union does not have the required 50% support of the employees in the bargaining unit that the Union proposed. To not so change its position, would result in the Union's Application for Certification being dismissed. For this reason only, and not for any principled reason, the Applicant has reversed its proposed single bargaining unit description and now requests that this Board award two separate bargaining units in order to gain certification in one of the units.
>
> ***
>
> The Responding Party respectfully submits that to allow the Applicant Union to reverse its original proposed bargaining unit description solely because it does not have the required support of the employees in that union is contrary to the facilitation of collective bargaining in this province and will only serve to undermine the credibility of the certification process under the *Labour Relations Act*.

15. Of course, these precise arguments can be and are made by the union. The employer initially, stated: "The Responding Party strongly disputes the appropriateness of a single bargaining unit for these two distinct operations". It was only after the results of the vote became known that the employer, like the union, changed its position for its own strategic reasons. Its concerns about the credibility of the certification process are diminished for this reason.

16. Nobody likes these change of position cases. However, they are rare and are a natural outcome of the Board's processes which are designed to ensure that certification cases get dealt with quickly, effectively and without the requirement of unnecessary litigation.

17. We turn now to the determination of the appropriate bargaining unit. The Board's practice in determining bargaining units is set out in *Hospital for Sick Children* [1985] OLRB Rep. Feb. 266. Over time, the Board's application of the test in that case has resulted in the following:

> The Board will generally accept the bargaining unit claimed by the applicant unless that bargaining unit would create serious labour relations problems for the employer.

18. The Board's practices and policies envision the possibility that there may be more than one appropriate bargaining unit at an employer. This is just such a case. In our view, both the all employee bargaining unit and the two bargaining unit structure initially proposed by the employer are appropriate. The appropriateness of each is made clear by the position of the parties: the employer initially took the position that the *only* appropriate bargaining unit was the two unit structure; it now says an all employee bargaining unit is appropriate. There can be no better evidence that the employer accepts either structure as suitable for its operations.

19. There is nothing to suggest that a two bargaining unit structure would cause serious labour relations problems for the employer. The interchange between the two groups of employees is minimal.

20. For all of the foregoing reasons, the Board finds that a two bargaining unit structure as now sought by the union is appropriate.

21. The style of cause is hereby amended to reflect the correct name of the responding party: "Nutra Services Inc.".

22. On the taking of the representation vote directed by the Board, not more than fifty per cent of the ballots cast by employees in the retirement home bargaining unit were cast in favour of the applicant.

23. The application is therefore dismissed.

24. The Board directs the parties' and the employees' attention to section 10(3) of the Act. Should an application for certification be filed within one year of the date of this decision, the effect, if any, of this decision and section 10(3) of the Act on that subsequent application may be determined if necessary, at that time.

25. With respect to the Nursing Home aspect of the business, the Board finds that:

> all employees of Nutra Services Inc. employed at the Nursing Home of the Villa Care Centre in the Town of Midland, Ontario, save and except supervisors, persons above the rank of supervisor, office and clerical staff,

constitutes a unit of employees appropriate for collective bargaining.

26. On the taking of the representation vote directed by the Board, more than fifty per cent of the ballots cast by employees in the bargaining unit were cast in favour of the applicant.

27. A certificate will issue to the applicant.

28. The Registrar will destroy the ballots cast in the representation vote taken in this matter following the expiration of 30 days from the date of this decision unless a statement requesting that the ballots should not be destroyed is received by the Board from one of the parties before then.

29. The responding party is directed to post copies of this decision immediately, adjacent to all copies of the "Notice of Vote and of Hearing" posted previously. These copies must remain posted until the date that had been set for the hearing.

OPINION OF BOARD MEMBER J. A. RUNDLE: August 21, 2008

30. Had the ballot box been sealed, as I had originally proposed in the July 11, 2008 Board decision, the parties would have been held to their original bargaining unit proposals. The resulting determination of the appropriateness of the bargaining unit would have been more principled than what has resulted from not sealing the ballot box.

3777-06-ES Ardelle D. Stoner, Claimant v. **Pinnacle Freight Specialists Inc.** and Director of Employment Standards, Responding Parties

Constitutional Law – Employment Standards – The applicant sought review of an employment standards officer's refusal to issue an order to pay in circumstances where she alleged she was deprived of her position following a pregnancy leave – The Board first determined that the employer, a logistics company that coordinated international and interprovincial transportation of goods, was a provincial undertaking and subject to Ontario laws – On the substantive issue, the Board held that the legislation requires an employee returning from pregnancy leave to be returned to her original position (or if it no longer exists a comparable one), but not necessarily to all the duties and responsibilities that position entailed – The transfer of certain client accounts to other employees was not a penalty under the Act – Application dismissed

BEFORE: *Kelly Waddingham*, Vice-Chair.

APPEARANCES: *Ardelle Stoner* appearing for the applicant; *Jack Desforge* appearing for Pinnacle Freight Specialists Inc.; *Michelle Packer* appearing as counsel for Pinnacle Freight Specialists Inc.

DECISION OF THE BOARD; July 28, 2008

1. This is an application by an employee for review of an Employment Standards Officer's refusal to issue an Order to Pay pursuant to section 116 of the *Employment Standards Act, 2000,* S.O. 2000, c.41, as amended (the "ESA").

2. This application is concerned with whether or not the responding party employer, Pinnacle Freight Specialist ("Pinnacle") harassed, intimidated and or penalized the applicant for exercising her right to take a pregnancy/parental leave.

3. The claimant alleges that she was forced to resign following her pregnancy/paternity leave because the employer irreparably poisoned the workplace. The claimant alleges that remarks were made to her during her leave with the intent to rush her back to work. The claimant also alleges that she was denied wage increases, and a company car. Finally, the applicant alleges that she was advised that she would no longer be the main contact person in the office to provide service to the employer's major client and that she was humiliated after she requested a new desk.

4. Pinnacle states that it did not terminate the claimant, but that she quit. That is the central issue in this matter. If the claimant voluntarily quit her employment, she was not entitled to anything further pursuant to the Act. However, if she was forced to resign the issue of appropriate remedy arises.

Preliminary Issue

5. A hearing was convened in this matter on April 22, 2008. After hearing the evidence that Pinnacle's business is the movement of goods, which regularly cross international and national borders, the Board requested written submissions from the parties as to whether or not the application fell outside the Board's jurisdiction.

6. Having carefully reviewed the submissions of the parties, I am satisfied that I do have jurisdiction to deal with this application.

7. Labour relations is primarily a matter of provincial competence, except where what is involved is labour relations of either a federal undertaking, or an enterprise that is integral to a federal undertaking. In those circumstances, federal rather than provincial labour relations legislation applies to both the federal undertaking and the subsidiary integral enterprise. See *Montcalm Construction Inc.* v. *Minimum Wage Commission et al.* (1978), 93 D.L.R. (3d) 641 (S.C.C.).

8. Federal undertakings are defined under section 2 of the *Canada Labour Code* as:

> **2.** In this Act,
>
> "federal work, undertaking or business" « entreprises fédérales »
>
> "federal work, undertaking or business" means any work, undertaking or business that is within the legislative authority of Parliament, including, without restricting the generality of the foregoing,
>
> (a) a work, undertaking or business operated or carried on for or in connection with navigation and shipping, whether inland or maritime, including the operation of ships and transportation by ship anywhere in Canada,
>
> (b) a railway, canal, telegraph or other work or undertaking connecting any province with any other province, or extending beyond the limits of a province,
>
> (c) a line of ships connecting a province with any other province, or extending beyond the limits of a province,
>
> (d) a ferry between any province and any other province or between any province and any country other than Canada,
>
> (e) aerodromes, aircraft or a line of air transportation,
>
> (f) a radio broadcasting station,
>
> (g) a bank or an authorized foreign bank within the meaning of section 2 of the Bank Act,
>
> (h) a work or undertaking that, although wholly situated within a province, is before or after its execution declared by Parliament to be for the general advantage of Canada or for the advantage of two or more of the provinces,
>
> (i) a work, undertaking or business outside the exclusive legislative authority of the legislatures of the provinces, and
>
> (j) a work, undertaking or activity in respect of which federal laws within the meaning of section 2 of the Oceans Act apply pursuant to section 20 of that Act and any regulations made pursuant to paragraph 26(1)(k) of that Act;
>
> "Minister" « ministre »

"Minister" means the Minister of Labour.

9. Furthermore, Section 167 of Part III of the *Canada Labour Code* states:

> **167.** (1) This Part applies
>
> (a) to employment in or in connection with the operation of any federal work, undertaking or business other than a work, undertaking or business of a local or private nature in Yukon, the Northwest Territories or Nunavut;
>
> (b) to and in respect of employees who are employed in or in connection with any federal work, undertaking or business described in paragraph (a);
>
> (c) to and in respect of any employers of the employees described in paragraph (b);
>
> (d) to and in respect of any corporation established to perform any function or duty on behalf of the Government of Canada other than a department as defined in the *Financial Administration Act*; and
>
> (e) to or in respect of any Canadian carrier, as defined in section 2 of the *Telecommunications Act*, that is an agent of Her Majesty in right of a province.
>
> (2) Division I does not apply to or in respect of employees who
>
> (a) are managers or superintendents or exercise management functions; or
>
> (b) are members of such professions as may be designated by regulation as professions to which Division I does not apply.
>
> (3) Division XIV does not apply to or in respect of employees who are managers.

10. Pinnacle does not assert that they are a federal undertaking, presumably because they do not own their own trucks. Pinnacle engages the services of transport carriers to carry their customers' goods to the United States and inter-provincially. Pinnacle seems to argue that they are integral to a federal undertaking, transportation of goods inter provincially and cross border. Pinnacle would be a subordinate operation.

11. The assessment of whether a subordinate operation is integral to the core federal undertaking is a factual determination which is dependent on the nature of that operation and its normal or habitual activities as a "going concern" rather than on any exceptional or casual factors. In other words, one needs to consider both how essential the subordinate operation is, and how consistently its services are provided. See: *Montcalm Construction Inc.* v. *Minimum Wage Commission et al.*

12. Pinnacle does not address the issue of how its operation is integral to the core federal undertaking. Rather, they assert that the inter-provincial shipment of its customers' goods is performed on a regular and continuous basis as opposed to casual and therefore they are within federal jurisdiction.

13. Pinnacle cites *Transport Besner Inc. (Re)* [2004] CIRB No 284 as authority that transportation logistics companies fall within federal jurisdiction. I do not agree. A careful reading of the case indicates that *Transport Besner* (supra) concerned an application for a single employer declaration and the sale of a business declaration in the trucking industry. The issue before the federal Board was whether there had been the sale of Transport Bresner to Bresner Central and Bresner Atlantic. The "logistics" company (Besner Network) shared the same management as the three trucking companies and some of the same management. Bresner Network, was integral to the core federal undertaking as it administered and allocated contracts amongst its three trucking companies, Transport Besner, Besner Atlantic and Bresner.

14. Pinnacle does not own the equipment (transport trucks) which transport their customers' freight. Pinnacle is servicing its own customers, and merely utilizing transport carriers for that purpose. Pinnacle is a customer of transport carriers. Transport carriers could operate without Pinnacle, albeit some of the carriers may have to find new contracts.

15. Logistics companies/freight forwarders which arrange and coordinate interprovincial transportation of goods have been found not to be under federal legislation. Re *Cannet Freight Cartage Ltd. and Teamsters Local 419,* 60 D.L.R. (3d) 473; *Re: The Queen and Cottrell Forwarding Co. Ltd.,* 33 O.R. (2d) 486; *United Transportation Union v. Central Western Railway Corp.,* [1990] 3 S.C.R. 1112; *Lavigne v. Bax Global (Canada) Ltd.,* [2006] C.L.A.D. No. 36. Therefore I have jurisdiction to deal with this application.

FACTS

16. At the hearing, there was substantial agreement on the facts of the case.

17. Pinnacle is a logistics company which arranges for the transportation of goods. The office staff provide dispatch and customer service to Pinnacle's clients. Mr. Jack Desforge, a co-owner of the company testified that no particular employee is assigned to any one account and that all staff work as a team to provide service to all of Pinnacle's clients.

18. The Claimant began her employment with Pinnacle in 1999. She commenced her first pregnancy/parental leave in December 2000 and returned to work in May 2001. Upon her return to work the Claimant was promoted to the position of Logistics Manager.

19. On March 17, 2006, the Claimant began her second pregnancy and parental leave. The Claimant did not refute Mr. Desforge's evidence that no particular employee was assigned to one Pinnacle account, but testified that prior to her second leave she trained Dispatcher Jeff Cameron to be the central contact person in the office for the "Bush account," which is Pinnacle's largest account.

20. The Claimant acknowledged that she had a good work relationship and friendship with Mr. Desforge. Mr. Desforge would often take the Claimant and her spouse out to dinner, on company

trips and invite her family to his home. The Claimant acknowledged that she had a relationship with Mr. Desforge in which they "joked."

21. During the Claimant's leave she frequently sent electronic mail to Mr. Desforge offering to work. Pinnacle never accepted this offer. The Claimant frequently dropped into Pinnacle's office for social visits and attended Pinnacle social functions.

22. According to the Claimant, whenever she visited the workplace, or attended social functions, Mr. Desforge would often remark "Ardelle, you need to get back to work." The Claimant testified that this remark became a "joke" amongst Mr. Desforge's family and that his mother-in-law and sister-in-law would drive by the Claimant's house and if they saw her they would yell out "Ardelle, you need to get back to work."

23. Mr. Desforge denied that he repeatedly told the Claimant that she had to get back to work. According to Mr. Desforge there was some confusion at Pinnacle about when the Claimant would return to work and some inquiries were made. When the Claimant left to take her second pregnancy/parental leave, she did not provide Pinnacle with the date that she would be returning to work. On or about the beginning of October 2006, the Claimant advised Pinnacle that she would be returning to work in January 2007. At the end of October 2006, the Claimant's spouse without consulting her told Pinnacle that the Claimant would be returning in April 2007. Shortly thereafter, the Claimant called Pinnacle and confirmed that she would return to work from her leave in January 2007.

24. In December 2006, the Claimant met with Mr. Desforge to discuss her return to work, specifically the possibility of a company car, salary increase and work assignment.

25. The Claimant did not have a company car, but in the past, Mr. Desforge and the Claimant had had discussions about the possibility of a company car if the Claimant moved into a sales position. The Claimant decided to broach the topic of a company car prior to returning from her pregnancy/paternity leave.

26. The Claimant was told that she was not entitled to a company car. The Claimant asked why Dave Clyde had a company car and was told that this was because he was a shareholder in the company. The Claimant was also advised that "Randy" and "John" had not been given a company car, rather they had received a loan from Pinnacle to purchase a car.

27. The Claimant inquired about a salary increase and was told that she would receive a pay increase when she returned from her leave. The Claimant testified that when she began to work for Pinnacle in 1999 she was paid $12.00 per hour. According to the Claimant she received incremental raises about every six months. The Claimant testified that she had received a raise when she returned to work after the birth of her first child. According to the Claimant she could not remember when she had last received an increase in her salary. Prior to taking maternity leave, the Claimant was making $18.00 per hour. The Claimant had not approached Pinnacle about a raise prior to taking her leave and there was no indication from Pinnacle that she would receive a wage increase.

28. When the Claimant asked Mr. Desforge if she would return to taking care of the Bush account, she was told no. Mr. Desforge testified that everyone serviced the Bush account, but that

Jeff had been the major contact in the office for the Bush account for almost one year and had built "personal relationships."

29. Shortly before the Claimant was to return to work, she learned that the office was to be reconfigured. Mr. Desforge testified that the Claimant "demanded" a new computer, desk and telephone. The Claimant testified that she did not remember asking for a new computer and phone, but that she may have "joked," that she did not want anyone's "cooties." The Claimant testified that she did request the other co-owner's Dave Clyde's old desk because it was free standing.

30. The Claimant testified that the "last straw" for her was when Mr. Desforge called her from the office and in front of her colleagues at work yelled at her "how dare you demand preferential treatment," because she had asked about getting Mr. Clyde's old desk.

31. On December 29, 2006, the Claimant submitted her letter of resignation.

32. On January 8, 2007, the Claimant accepted a higher paying position with another logistics company where she was employed for three months prior to being laid off. In July 2007, the Claimant was able to obtain a permanent position.

DECISION

33. Section 74(1)(a) of the Act states:

> **74.** (1) No employer or person acting on behalf of an employer shall intimidate, dismiss or otherwise penalize an employee or threaten to do so,
>
> (a) because the employee,
>
> (i) asks the employer to comply with this Act and the regulations,
>
> (ii) makes inquiries about his or her rights under this Act,
>
> (iii) files a complaint with the Ministry under this Act,
>
> (iv) exercises or attempts to exercise a right under this Act,
>
> (v) gives information to an employment standards officer,
>
> (vi) testifies or is required to testify or otherwise participates or is going to participate in a proceeding under this Act,
>
> (vii) participates in proceedings respecting a by-law or proposed by-law under section 4 of the *Retail Business Holidays Act*,

(viii) is or will become eligible to take a leave, intends to take a leave or takes a leave under Part XIV; or

...

34. The Claimant argues that Mr. Desforge intimidated and harassed her by demanding that she return to work. The applicant alleges that she was penalized for taking a pregnancy/paternity leave when she was denied wage increases, a company car and told that she would no longer be the major contact in the office to provide service to the Bush account. Finally the applicant alleges that she was humiliated by her employer when he yelled at her on the phone in front of her colleagues about seating arrangements upon her return to work. According to the Claimant this poisoned work environment left her no choice but to submit her resignation.

35. Mr. Desforge denies that he repeatedly told the Claimant that she had to get back to work. There were some inquiries as to when Pinnacle could expect that the Claimant would return to work. When the Claimant left to take her pregnancy/parental leave she did not provide Pinnacle with a date for her return. When the applicant did provide a return date, her spouse called Pinnacle and changed the date. The Claimant subsequently contacted the employer and advised that she would return to work on the initial date she had provided. There would no doubt be some confusion on the part of Pinnacle as a result and reasonable inquiries about when she would return to work.

36. I am satisfied that there was no intimidation or harassment of the Claimant to return to work. The Claimant testified that the demand that she return to work became a "joke" in which Mr. Desforge' extended family partook. Mr. Desforge must not have been serious about any such comments because he never accepted the Claimant's repeated email offers to come into work during her leave.

37. There is no evidence before me that the Claimant was denied a wage increase because she was pregnant and took a pregnancy/parental leave. To the contrary at the December 2006 meeting, the Claimant inquired about a salary increase and was told that she would receive a pay increase when she returned from her leave. The Claimant had not approached Pinnacle about a raise prior to taking her leave and there is no evidence before me that Pinnacle told the Claimant that she would receive a wage increase and then denied her an increase in pay.

38. There is no evidence before me that the Claimant was denied a company car because she was pregnant and took a pregnancy/parental leave. In the past Mr. Desforge had told the Claimant that there was the possibility of receiving a company car if the Claimant moved into a sales position. The Claimant was to return to her position as Operations Manager upon her return from her pregnancy/parental leave, not a sales position and therefore there was no entitlement to a company car.

39. Section 53(1) of the ESA provides that employees who have taken pregnancy or parental leave have an absolute right to reinstatement to their previous position, or if it no longer exists, to a comparable position. The one narrow exception is in situations in which an employer's operations have been suspended or discontinued.

40. The employer's decision not to return the applicant after her pregnancy/parental leave to being the central contact person in the office for the Bush account is not a penalty for taking a leave.

The "position" the Claimant was entitled to be returned to was one which was substantially and qualitatively the same as the one she held prior to her leave. *Re Ontario New Democratic Party Caucus*, [1993] O.E.S.A.D. No. 117. The applicant would continue along with her colleagues to provide service to the Bush account.

41. Section 53(1) of the ESA requires that an employer reinstate the returning employee to their previous position not to the exact set of duties she had prior to taking a pregnancy or parental leave. The purpose of section 53(1) is to preserve the employee's position as it would have been had a pregnancy or parental leave not been taken place – "not to freeze their duties in perpetuity." *Re Ontario New Democratic Party Caucus*, [1993] O.E.S.A.D. No. 117.

42. While the Claimant may have been offended by Mr. Desforge's yelling at her over the phone regarding her request for new furniture and seating arrangements, this in no way amounts to harassment or intimidation because the Claimant took a pregnancy/paternal leave. The Claimant acknowledged that she was "joking" when she requested new furniture because she did not want anyone's "cooties." Mr. Desforge's strong reaction and denial of the request was because he believed that this was a further demand from the claimant following requests for a salary increase, car allowance and particular work assignments. This does not excuse the forceful delivery of his denial, however given the circumstances of this situation, I do not believe that Mr. Desforge's reaction was in any way related to the fact that the Claimant took a pregnancy/parental leave. Finally, there is no evidence before me to indicate that Mr. Desforge's remarks to the Claimant were heard by her colleagues or were meant to humiliate the Claimant.

43. While the Claimant believes that her work place was irreparably poisoned, I am satisfied that her choice to quit was voluntary and that there has been no violation of the ESA.

44. For all the aforementioned reasons, the application is dismissed.

3404-06-R Christian Bourgeois, Applicant v. The International Brotherhood of Electrical Workers, Local 586, Responding Party v. **Régulvar Canada Inc./Régulvar Inc.**, Intervenor

Constitutional Law – Bargaining Rights – Termination – An employee in the construction industry applied for termination of bargaining rights – The union argued that on the application date, the applicant's work was within federal jurisdiction – The applicant was installing sensors to monitor temperature and humidity in computerized offices used by a federal intelligence/security agency, a core federal undertaking – The removal of labour relations from provincial competence is exceptional, and is only appropriate when the subsidiary's work is integral to a core federal undertaking – The Board held that the sensor system was not integral to the core federal undertaking – The construction employer did no work that was directly or indirectly related to the agency's federal purposes in intelligence and security – Therefore, the employer's labour relations were governed by the *Labour Relations Act* and by the Board – Matter continues

BEFORE: *Mary Ellen Cummings*, Alternate Chair.

APPEARANCES: *John Westdal* and *Christian Bourgeois* for the applicant; *Ron Lebi* and *James Barry* for the responding party; *André Champagne* and *Michel Harel* for the intervenor.

DECISION OF THE BOARD: July 14, 2008

1. This is an application to terminate bargaining rights in the construction industry. The evidence previously led established that Christian Bourgeois, the applicant and sole employee at work in the bargaining unit on the application date, was performing the work of a construction electrician. However, the IBEW asserts that the work performed by Mr. Bourgeois on February 1, 2007, and indeed all the work performed by his employer in respect of the project, is work which is integral to a core federal undertaking. The result, asserts the IBEW, is that the applicant and the employer's labour relations were governed by federal law on the application date and the application must fail.

2. The Board must determine whether Mr. Bourgeois and Régulvar Canada Inc./Régulvar Inc. were engaged in work that is integral to a core federal undertaking so as to take their labour relations outside the jurisdiction of the Ontario *Labour Relations Act, 1995*, S.O. 1995, c.1, as amended ("the Act"), and the Board.

Facts

3. The parties agreed on all of the relevant facts and on the governing legal principles. They disagree, of course, about what conclusions the Board should draw from the application of those principles to the facts.

4. In January of 2005, the employer acquired a contract to install a new site monitoring system (SMS) at three buildings that comprise the offices of the Communications Security Establishment (CSEC) in Ottawa. On its website, CSEC describes itself as "Canada's national cryptological agency". The website goes on to say that "we provide the Government of Canada with two key services: foreign signals intelligence in support of defence and foreign policy, and the protection of electronic information and communication". Not surprisingly, it is difficult for anyone to get detailed information about the work of CSEC, its premises and any construction projects performed there. The contract between the employer and CSEC for the installation of the SMS imposed a number of security measures, and Régulvar's employees who work on the project are required to hold security clearances and be accompanied by CSEC personnel when they work.

5. As outlined in an earlier decision, the union had considerable difficulty finding information, and summonsing persons from CSEC who have knowledge of the construction work being performed. The witnesses who did attend were also reluctant to give sensitive or injurious information. Section 38 of the *Canada Evidence Act*, R.S.1985, c. 5 requires that testimony about sensitive or injurious information be given in compliance with section 38 of that statute.

6. At the end of the day, there was considerable co-operation to put before the Board the information it required and there was no suggestion that the IBEW was compromised in putting forward its case.

The work of CSEC

7. Again, turning to the CSEC website, it describes its mandate as follows:

a. To acquire and use information from the global information infrastructure for the purpose of providing foreign intelligence, in accordance with the Government of Canada intelligence priorities;

b. to provide advice, guidance and services to help ensure the protection of electronic information and information infrastructures of importance to the Government of Canada; and

c. to provide technical and operational assistance to federal law enforcement and security agencies in the performance of their lawful duties.

Both of the witnesses who testified about CSEC confirmed that explanation of the mandate was accurate.

8. Not surprisingly, CSEC uses computers to carry out its mandate, and its three buildings in Ottawa contain a number of server rooms. On the application date, Mr. Bourgeois worked for part of the day in a server room and for part of the day in another location. While in the server room, Mr. Bourgeois replaced a controller. The controller collects information from temperature and humidity sensors in the server room. For the rest of the day, Mr. Bourgeois was pulling electrical wire and installing new sensors that, again, detect changes in temperature and humidity in the areas where they are located.

9. The SMS is comprised of sensors, floor controllers, a main controller, software and operator work stations. Together the system collects and transmits information about temperature, humidity, water leaks and carbon monoxide levels throughout the building. The SMS also monitors the status of mechanical equipment such as air conditioning units, uninterrupted power supplies and diesel generators. The information is communicated and appears on a screen in the Facilities Management area and an alarm sounds when any of the sensors detect levels outside pre-determined ranges. A member of the Facilities Management department or a Commissionaire will then be sent to the relevant area to check out the alarm.

10. The SMS is not integrated, in any way, with any equipment or computers. The SMS does not control the environment in which any people, equipment or computers operate. Instead, the SMS measures and detects elements in the environment where people work and equipment and computers are situated. For example, it is agreed that if the equipment in any kind of server room overheats, the computers will stop working or certain elements may malfunction. The SMS will detect, for example, that the temperature in a server room has exceeded the defined parameters and will initiate an alarm. Cooling units in server rooms and other parts of the buildings also have sensors, but they are not part of the SMS. The HVAC system is also not part of the SMS.

11. Ronald Rose, the Supervisor of Facilities Management for CSEC, testified that the SMS that preceded the one Régulvar installed had been neglected and not updated. The system that was installed in the early 1990's had fallen into disuse by 2005 because it no longer provided reliable information.

12. Mr. Rose was responsible for drafting the "requirements" part of the contract that was eventually awarded to Régulvar. He described the need as follows:

> The communications security Establishment (CSE) has an urgent requirement to upgrade the hardware and software components of its Site Monitoring System to fully meet and support the needs of its mission critical operations.

13. In his testimony, Mr. Rose said that characterizing the SMS as "urgent" to "fully meet and support the needs of CSE's mission critical operations" was perhaps overblown, in an effort to capture the attention of those who would decide if funding would be allocated to a new SMS system. But Mr. Rose did not resile from the words he wrote. He said that from the perspective of facilities management, the need was urgent and he intended his statement of the requirement to be taken seriously.

14. After the initial installation contract was completed, Régulvar has been retained on a number of contracts to expand the SMS. Régulvar has added more sensors and repaired or replaced sensors damaged by construction work performed by others. Régulvar's relationship with CSEC continued up to and including the date of the application for termination of bargaining rights.

Legal Principles

15. As set out at the start of this decision, the parties agree on the relevant legal principles. In *Northern Telecom v. Communication Workers of Canada,* [1980] 1 S.C.R. 115, at pages 131 and 132, the Supreme Court of Canada set out the test for determining whether labour relations that would normally be governed by provincial jurisdiction nevertheless fall within federal jurisdiction because "...such jurisdiction is an integral part of its primary competence over some single other federal subject":

> The best and most succinct statement of the legal principles in this area of labour relations is found in Laskin's *Canadian Constitutional Law* (4th ed., 1975) at p. 363:
>
> In the field of employer-employee and labour-management relations, the division of authority between Parliament and provincial legislatures is based on an initial conclusion that in so far as such relations have an independent constitutional value they are within provincial competence; and, secondly, in so far as they are merely a facet of particular industries or enterprises their regulation is within the legislative authority of that body which has power to regulate the particular industry or enterprise ...
>
> In an elaboration of the foregoing, Mr. Justice Beetz in *Construction Montcalm Inc. v. Minimum Wage Commission* [[1979] 1 S.C.R. 754] set out certain principles which I venture to summarize:
>
> (1) Parliament has no authority over labour relations as such nor over the terms of a contract of employment; exclusive provincial competence is the rule.
>
> (2) By way of exception, however, Parliament may assert exclusive jurisdiction over these matters if it is shown that such jurisdiction is an integral part of its primary competence over some other single federal subject.

> (3) Primary federal competence over a given subject can prevent the application of provincial law relating to labour relations and the conditions of employment but only if it is demonstrated that federal authority over these matters is an integral element of such federal competence.
>
> (4) Thus, the regulation of wages to be paid by an undertaking, service or business, and the regulation of its labour relations, being related to an integral part of the operation of the undertaking, service or business, are removed from provincial jurisdiction and immune from the effect of provincial law if the undertaking, service or business is a federal one.
>
> (5) The question whether an undertaking, service or business is a federal one depends on the nature of its operation.
>
> (6) In order to determine the nature of the operation, one must look at the normal or habitual activities of the business as these of "a going concern", without regard for exceptional or casual factors; otherwise, the Constitution could not be applied with any degree of continuity and regularity.

16. In the case before the Board, the parties agree that CSEC is a core federal undertaking because CSEC is concerned with defence in Canada and falls under the jurisdiction of the Minister of Defence. Section 91(7) of *The Constitution Act, 1867* (U.K.), 30 & 31 Victoria, c. 3. provides that "militia, military and naval service and defence" are matters of federal competency.

17. The real issue between the parties concerns the fourth principle set out in *Northern Telecom*. Is the work that was performed by Mr. Bourgeois on the application date, and the work of Régulvar more generally in respect of the SMS, "...related to an integral part of the operation..." of CSEC? At pages 132 and 133 of *Northern Telecom*, the Court continued that after determining that a core federal undertaking is at issue, the Court looks at the subsidiary operation, and its relationship to the core federal undertaking, asking whether the relationship is "vital, essential or integral", with the result that the subsidiary's labour relations must be removed from provincial jurisdiction.

Submissions and analysis

18. The IBEW started with the contract requirements established by CSEC and set out above at paragraph 12. The union submitted that if CSEC identified the installation of the SMS to be "urgent" to "fully meet and support the needs of CSE's mission critical operations", then who are we to second guess?". Counsel pointed out that CSEC characterized the work in that fashion long before this labour relations dispute arose and, in any event, CSEC has no interest in the outcome of this case, so its perspective is a valuable neutral one.

19. Counsel for the IBEW submitted that the SMS is essential to the work of CSEC because it provides a means to alert CSEC that parts of its building, and in particular one or more of its server rooms, are operating in climate conditions that exceed pre-determined ranges. Since it is well known that computers do not operate properly in environments that are too hot, or too cold, or too wet or too dry, the SMS is vital to the computer-driven work of CSEC.

20. Counsel noted that Régulvar does not have a casual relationship in respect of CSEC and the SMS. Régulvar not only installed the system in 2005, but has been awarded a number of contracts since then, to maintain and upgrade the SMS. This is not a chance or occasional

relationship, counsel argued, but a regular and sustained one, which is one of the factors *Northern Telecom* identifies as important.

21. Counsel for Mr. Bourgeois, in submissions that were adopted by counsel for Régulvar, argued that the case law placed a very high test on a party seeking to establish that an activity is integral to a core federal undertaking. The IBEW, in this case, has to establish that the work performed by Mr. Bourgeois and Régulvar was "integral", "indispensable", "vital'" or "essential" to the work of CSEC. In *Caterair Chateau Canada Limited*, [1995] OLRB Rep. May 633, the Board considered whether a company that provided catering to an airline, a core federal undertaking, was essential. At paragraph 36, the Board said "...we are not convinced that catering is an inherent part of operating a line of air transportation, nor that federal regulation of catering employees' labour relations is essential to federal regulation of a line of air transportation". Counsel for Mr. Bourgeois argued that I should reach a similar conclusion. CSEC is able to operate its business without relying on the work of Régulvar. Indeed, for a number of years, the predecessor SMS did not work at all and no evidence was led that the work of CSEC was compromised as a result.

22. The facts in this case, counsel for Mr. Bourgeois argued, are well below the high test set by the Courts. A system that monitors humidity levels in the server room and other parts of the office is far removed from being essential or indispensable. Counsel noted that even the strong language drafted by Mr. Rose to encourage funding of the new SMS did not say that the project was critical to the operations of CSEC, but critical to "support" the operations of CSEC, a significant distinction that must lead to the conclusion that the SMS is not indispensable to a core federal undertaking.

Analysis and Decision

23. I conclude that the work performed by Mr. Bourgeois on the application date, and the work performed by Régulvar more generally, is not integral or vital to the core federal undertaking of CSEC. The core federal undertaking is to acquire and use foreign intelligence, protect Canadian electronic information and information infrastructures and to provide technical assistance to federal law enforcement agencies. Régulvar does no work that relates directly or indirectly to the core federal undertaking. Régulvar installed, maintains and upgrades a system that helps CSEC to monitor the environment in which its employees, its equipment and its computers operate. The system installed by Régulvar is no different from one that would be installed by any building owner seeking a reliable and centralized means to collect and respond to information about the building environment. As Mr. Rose put it in his testimony, from a facilities management perspective, the SMS was an urgent need; its installation made it much easier for facilities management to perform their job. But in addressing the constitutional question, a higher test must be met.

24. As the Supreme Court of Canada noted in *Northern Telecom* (above), removal of labour relations from provincial competence is exceptional and appropriate only where the subsidiary is engaged in work that is so integral to the core federal undertaking, that its labour relations must be governed by the same regime as that of the core federal undertaking. There is nothing in the SMS or Régulvar's performance of the work that mandates that its labour relations be governed by the same regime as governs the employees of CSEC.

25. I conclude that at all relevant times, the labour relations of Régulvar were properly governed by the Act and the Ontario Labour Relations Board.

26. Further to the notice already sent by the Board, this matter will reconvene on October 16 and 17, 2008 to consider the IBEW's allegations that Régulvar has breached section 63(16) of the Act and violated the collective agreement in using persons other than members of the bargaining unit to perform work, thus facilitating this application.

0483-08-R Teamsters Local Union No. 938, Applicant v. **Stock Transportation Ltd.**, Responding Party

Bar – Bargaining Unit – Certification – The Teamsters sought to certify employees of Stock Transportation in the City of Toronto – The application came on the heels of three earlier applications with similar bargaining unit descriptions – Stock argued that it had no employees in the proposed bargaining unit, or that the application was barred pursuant to s. 10(3) of the Act – A representation vote was ordered and the ballot box was sealed – The Board rejected the employer's "no employees" submission because the application, like the earlier ones, relied on a "City of Toronto" description but implicitly specified municipal addresses – The union could not have intended to apply for a bargaining unit with no employees – The Board held that in counting the ballots, any prejudice to the employer was outweighed by the prejudice to the employees arising from the potential of a longer bar, given that a determination of the bar issue under s. 10(3) or 10(3.1) would require days of hearing – A counting of the ballots, without prejudice to any of the employer's positions, could also mean the end of the matter – Vote count ordered

BEFORE: *Ian Anderson*, Vice-Chair.

APPEARANCES: *Stephen Krashinsky* and *Ed Arbic* appeared on behalf of the applicant; *Richard J. Nixon, Matt Baynie, Gisele Pengelly* and *Leslie Frattolin* appeared on behalf of the responding party,

DECISION OF THE BOARD: July 11, 2008

1. This is an application for certification pursuant to the *Labour Relations Act, 1995*. The responding employer takes the position that there are no employees in the bargaining unit proposed by the applicant union, with the result that, pursuant to section 9(1) of the Act, it cannot be an appropriate bargaining unit. In the alternative, the employer takes the position that the application is barred by section 10(3) of the Act

2. Pursuant to a decision of the Board (differently constituted) dated May 14, 2008 a representation vote was held on May 16, 2008 but the ballot box was sealed until the parties agreed to count the ballots or the Board ordered that they be counted. One hundred and ninety two ballots were cast. The employer disputed all of the ballots on the basis of its position that there was no one in the bargaining unit, and thus no one eligible to cast a ballot. A few ballots were also disputed by one of the parties on other bases. The parties have not agreed that any of the ballots be counted.

3. A hearing was held on June 16, 2008. The union urges the Board to order the ballots be counted, without prejudice to the employer's positions. The union notes that if it lost the vote, the application will be dismissed whether or not the employer is correct with respect to its arguments. If

its application is dismissed on the results of the vote, the union agrees that it should be barred for one year from bringing a further application. The employer argues strenuously that it would be prejudiced if the ballots were counted and the union won the vote, but it was subsequently determined that the application should be dismissed on either of its alternative positions. The Board reserved on the question of whether to order the ballots be counted and directed the parties address argument to the employer's alternative positions on the basis of the facts that each asserted it could prove.

4. The application was filed on May 9, 2008. The bargaining unit proposed in the application for certification reads as follows:

> All drivers and driver trainers of Stock Transportation Ltd. based in the City of Toronto, save and except supervisors and persons above the rank of supervisor, office and clerical staff, summer students, employees covered by the subsisting collective agreement between the parties negotiated pursuant to the certificate issued by the Board on September 20, 2005 in Board File No. 1784-05-R and employees in the bargaining unit subject to the statutory bar pursuant to the Board's decision in Board File No. 3363-05-R.
>
> **NOTE:** The employees affected by this application for certification are currently based at the employer's "Scarborough North" location. The collective agreement referred to in the bargaining unit description proposed above covers employees based at the employer's Scarborough location on Upton Road. The statutory bar referred to in the bargaining unit description proposed above applies to a bargaining unit of employees based in Etobicoke. The union intends to apply for the Etobicoke group separately, after the statutory bar is lifted.
>
> The reason that the union applies herein for a unit of drivers, etc. based in the "City of Toronto", rather than for a unit of drivers, etc. based at the Scarborough North location, is that the union understands that the employer is moving employees out of this Scarborough North location. The move has already been announced for the mechanics at the Scarborough North location and it is anticipated that the drivers will similarly be moved. The union does not know where the employer will be moving the drivers.

In its response, the employer agreed with this bargaining unit description.

5. The two exceptions in the bargaining unit description referencing Board File numbers require some comment. Both relate to previous applications for certification by the current applicant. It is common ground that the first, employees covered by the subsisting collective agreement negotiated pursuant to a certificate issued by the Board on September 20, 2005, in Board File No. 1784-05-R (hereafter "the first application"), relates to employees who work in and out of 17 Upton Road, Toronto, Ontario.

6. What I shall refer to as the second exception references Board File No. 3363-05-R ("the second application"). That application for certification was filed on January 9, 2006. The bargaining unit proposed by the union in that application for certification was:

> all employees of Stock Transportation Ltd. in the City of Toronto, save and except supervisors, persons above the rank of supervisor, full-time dispatchers, mechanics, sales, full-time office and clerical staff and persons covered by the certificate issued by the Board on September 20, 2005 in board File No. 1784-05-R, then by any collective agreement negotiated between the union and the employer pursuant to that certificate.

At the time of the second application it is common ground that the employer had only two bases in the City of Toronto: 17 Upton Road, in Scarborough, and 60 McCulloch, in Etobicoke. The second application resulted in protracted litigation. It was ultimately dismissed on June 4, 2007. It is common ground that this dismissal was pursuant to section 10 of the Act. It is the dismissal of the second application upon which the employer relies for its alternative argument that the current application is untimely.

7. In its submissions the union also relies upon the fact that subsequent to the filing of the second application the employer opened a third base in the City of Toronto: 1365 Kennedy Road, referred to by the union as North Scarborough and by the employer as the North Toronto CSC. On March 1, 2007 the union filed a third application for certification, which it states was understood by all parties to be with respect to this new base. The bargaining unit proposed by the union in that application for certification was:

> All drivers and driver trainers of Stock Transportation Ltd. based in the City of Toronto, but excluding all employees based in Scarborough and covered by the existing collective agreement between the Responding Party and the union, and excluding all employees based in Etobicoke in the bargaining unit that is the subject of Board File No. 3363-05-R and excluding managers and persons above the rank of manager, office and clerical staff and summer students.

A representation vote was directed by the Board. The union lost the vote and by decision of the Board dated March 27, 2007, the third application was dismissed. The employer argues that the third application is irrelevant to the issues currently before the Board.

8. The current application, which is the union's fourth application, filed, as noted, on May 9, 2008, completes the chronology.

9. While an oversimplification, the following chart gives an overview of the positions of the parties with respect to the four applications:

Application.	**Union's Position as to Scope of Bargaining Unit at issue.**	**Employer's Position as to Scope of Bargaining Unit at issue.**
Board File No. 1784-05-R:	All employees working in	All employees working in

application filed September 1, 2005; certificate granted September 20, 2005.	and out of 17 Upton Road, Scarborough.	and out of 17 Upton Road, Scarborough.
Board File No. 3363-05-R: application filed January 9, 2006; dismissed June 4, 2007.	All employees based at 60 McCulloch, Etobicoke.	All employees in the City of Toronto, save and except those based at 17 Upton Road, Scarborough.
Board File No. 3749-06-R: application filed March 1, 2007; dismissed Mach 27, 2007.	All drivers and driver trainers based at 1365 Kennedy Road, North Scarborough.	Irrelevant.
Board File No. 0483-08-R: application filed May 9, 2008.	All drivers and driver trainers based at the North Scarborough base, currently located at 1365 Kennedy Road.	Empty.

10. As noted, the employer's first argument is that there are no employees in the bargaining unit proposed by the union in the current application (which I will also refer to as the fourth application), with the result that, pursuant to section 9(1) of the Act, it cannot be an appropriate bargaining unit. Section 9(1) provides:

> **9.** (1) Subject to subsection (2), upon an application for certification, the Board shall determine the unit of employees that is appropriate for collective bargaining, but in every case the unit shall consist of more than one employee and the Board may, before determining the unit, conduct a vote of any of the employees of the employer for the purpose of ascertaining the wishes of the employees as to the appropriateness of the unit.

11. For the purposes of this argument, the central dispute between the parties is the proper interpretation of the bargaining unit proposed by the union in the current application. There are two parts to this dispute. The first is with respect to the scope of the "statutory bar" arising from the Board's dismissal of the union's second application. It is common ground that the "statutory bar" referred to in the union's second exception is the bar pursuant to section 10(3) of the Act. That section provides:

> (3) If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is dismissed.

12. The employer states on the clear language of section 10(3), the bar applies to the bargaining unit "proposed" by the union in its second application. It argues that the use of the word "proposed" in section 10(3) is of significance, because it is the same word that is used in section 7(12). Section 7(12) provides in part that "the application for certification shall include a written description of the proposed bargaining unit". In the second application, that bargaining unit was, in pertinent part, "all employees of Stock Transportation Ltd. in the City of Toronto". As a result, the employer argues, the union's current application is for "all drivers and driver trainers of Stock

Transportation Ltd. based in the City of Toronto" except "all employees of Stock Transportation Ltd. in the City of Toronto". Since there is no issue that drivers and driver trainers of Stock Transportation Ltd. based in the City of Toronto are employees of Stock Transportation in the City of Toronto, the exception removes all employees from the bargaining unit applied for. Accordingly, the employer argues that the bargaining unit proposed in the fourth application cannot be appropriate because of section 9(1) of the Act.

13. In response, the union argues that while the second application was for "all employees of Stock Transportation Ltd. in the City of Toronto" (save and except those employees who work in and out of 17 Upton Road, Toronto, Ontario), at the time it was made the second application captured only one location: 60 McCulloch in Etobicoke. Further, the union argues that the second application was treated by all parties as applying only to that location. In this respect it points to the second application itself, which identifies 60 McCulloch as the only affected location and the employer's response. That response proposed a bargaining unit restricted to all employees based in and out of 60 McCulloch and asserted that the employer's operations were organized on a "Divisional" basis, with 60 McCulloch being one of the Divisions (the employer asserts that there has a been a significant restructuring of its operations since those submissions were made). The union also asserts that within the context of the second application, the parties ultimately agreed to exclude the ballots cast by employees who were not based in and out of 60 McCulloch.

14. The union also relies upon its third application which it argues is mirrored by the current application. The union notes that the third application, in describing the exclusion of the bargaining unit that was the subject of the second application, referenced "all employees based in Etobicoke". It also notes that the employer's response to the third application proposed a bargaining unit of drivers and driver trainers "working in and out of 1365 Kennedy Road": that is, the union argues, the employer's response presupposes that the exclusion of employees subject to the second application from a bargaining unit otherwise described as "all drivers and driver trainers of Stock Transportation Ltd. based in the City of Toronto" left a group of driver and driver trainers "working in and out of 1365 Kennedy Road". Thus the union argues that the statutory bar arising from the second application was understood, or at least treated by all parties as applying only to a bargaining unit of employees based in Etobicoke. The employer argues that the third application is irrelevant and notes that at the time of the third application the second application had not been dismissed. That is, the third application was not affected by the statutory bar which arose from the subsequent dismissal of the second application.

15. The second part of the dispute between the parties on the proper interpretation of the bargaining unit proposed by the union in the current application is with respect to the effect of the clarity note which follows the bargaining unit description. The union argues that if there is any doubt about what was intended by the reference to the exclusion of employees affected by the statutory bar in the bargaining union description, the clarity note makes it absolutely clear that only employees at 60 McCulloch in Etobicoke are excluded. It notes that the clarity note indicates that the employees affected by the application are at the employer's "Scarborough North" location. Further, the clarity note indicates that the statutory bar referred to in the bargaining unit description applies to a "bargaining unit of employees based in Etobicoke". The union argues that this is consistent with the manner in which it asserts the parties treated the second and third applications, as described above.

16. In response, the employer rejects the union's characterization of its positions in response to the second and third applications. The employer urges the Board to consider only the bargaining

unit that the union applied for in the fourth application, without reference to the clarity note. First, it states that the bargaining unit description is crystal clear and there is no need for recourse to the clarity note. Second, it states that the clarity note itself is far from clear. To the extent that the clarity note seeks to equate the bargaining unit subject to the statutory bar to a "bargaining unit of employees based in Etobicoke", the employer asks rhetorically what does the union mean by "based in Etobicoke". Does the union mean drivers based at 60 McCulloch; drivers whose routes or runs are in Etobicoke; drivers who live in Etobicoke; or drivers who drive students to schools located in Etobicoke? It argues that the Board should not have to "guess" what the applicant intended to apply for, and relies on *L.I.U.N.A., Local 1059 v. Monte Vista Contracting Inc.*, [1998] O.L.R.D. Number 3738. Further, if the union was seeking to apply for all drivers and driver trainers based at the employer's North Toronto location, the employer notes that the union did not list the street address for this location, i.e. 1365 Kennedy Road. The employer notes that this was a deliberate choice by the union, since the clarity note holds out the possibility that the employer will move this location. The employer argues that if it were to move the location of this base to Etobicoke, giving effect to a bargaining unit described simply as "based in North Toronto" would result in chaos.

17. For the purposes of addressing the employer's section 9(1) argument, the issue is the scope of the bargaining unit proposed by the union in its fourth application. Since the question is what the union was proposing, in my view the focus of this inquiry must be on the intention of the union, albeit as expressed by the words it used in describing its proposed bargaining unit. Two possible interpretations of the union's proposed bargaining unit are advanced. The employer's interpretation would require the conclusion that the union intentionally applied for a bargaining unit with no employees in it. The union's interpretation would result in the conclusion that the union intended to apply for a bargaining unit with employees in it which it could represent. Clearly the union's interpretation gives rise to a more plausible result. While the bargaining unit description refers to "employees in the bargaining unit subject to the statutory bar", in the clarity note the union expresses its understanding: that the statutory bar applies to a "bargaining unit of employees based in Etobicoke". Whether this is in fact the scope of the statutory bar is not determinative. In my view, in proposing an exclusion of employees in the bargaining unit subject to the statutory bar, the union intended to exclude employees based in Etobicoke.

18. In saying this, it will be apparent that I do not accept the employer's arguments with respect to the clarity note. First, I do not agree that recourse may only be had to the clarity note if the bargaining unit description is on its face unclear. Clarity notes are often used, for example, to address latent ambiguity about whether certain positions are included within another position set out in a bargaining unit description, or to remove from the bargaining unit specific individuals who would otherwise appear to fall within it. Second, I do not agree that the clarity note itself is insufficiently clear to be given effect. As of the date of the fourth application the employer had only one base in Etobicoke. Further, the Board has a long history of describing bargaining units of drivers in the transportation industry by reference to the base from which the drivers work. In my view, therefore, the clarity note makes it sufficiently clear that the union is applying for a bargaining unit of employees based at the employer's North Scarborough location, currently at 1365 Kennedy Road.

19. In the result, there is more than one employee in the bargaining unit proposed by the union in its fourth application and the employer's challenge on the basis of section 9(1) of the Act fails.

20. I wish to emphasize that this conclusion is predicated on the assumption that an appropriate bargaining unit can be described which is limited to the employees based in "North

Scarborough". While the employer agreed with the union's proposed bargaining unit, that agreement was clearly predicated on its position that the union's proposed bargaining unit contained zero employees, as outlined above. The Board, in any event, is not bound by the parties' agreement. The Board generally describes bargaining units by reference to either a street address or a municipality. "North Scarborough" is not the former and would not appear to be akin to the latter. Subject to what follows, the appropriate bargaining unit description is an issue which remains to be determined in this file.

21. I turn then to the employer's second argument: that the current application is barred by virtue of section 10(3) of the Act. The union argues that section 10(3) does not apply. In the alternative, it argues that the exemption set out in section 10(3.1) applies. Both the union and the employer make reference to *Greenvilla Home*, [2005] OLRB Rep. Mar./Apr. 299 and *Excel Technologies Limited*, [2007] OLRB Rep. Mar./Apr. 353.

22. It is convenient to set out section 10(3) again, as well as section 10(3.1):

> (3) If the Board dismisses an application for certification under this section, the Board shall not consider another application for certification by any trade union as the bargaining agent of any employee that was in the bargaining unit proposed in the original application until one year after the original application is dismissed.
>
> (3.1) Despite subsection (3), the Board may consider an application for certification by a trade union as the bargaining agent for employees in a bargaining unit that includes an employee who was in the bargaining unit proposed in the original application if,
>
> (a) the position of the employee at the time the original application was made was different from his or her position at the time the new application was made; and
>
> (b) the employee would not have been in the bargaining unit proposed in the new application had he or she still been occupying the original position when the new application was made.

23. There are two aspects to the parties dispute about the application of these sections. First, the employer argues that there are 55 employees who fall within the bargaining unit proposed in the current application, assuming that is to be understood as drivers and driver trainers based at 1365 Kennedy Road, who fell within the bargaining unit proposed in the second application. The employer's position is predicated on the premise that employees fell within the bargaining unit proposed in the second application, i.e. were employees of Stock Transport Limited "in the City of Toronto", if they worked in the City of Toronto, irrespective of where they were dispatched from at the time. The union rejects this premise. It argues that an employee only fell within the bargaining unit proposed in the second application if the employee was dispatched from within the City of Toronto. It states that there was only one such employee: Joyce Goodman was dispatched from 60 McCulloch. (While taking the position that where the employees were dispatched from is irrelevant, the employer concedes that 53 of the 55 employees in question were dispatched from outside of Toronto. It states, however, that in addition to Ms. Goodman, another employee, Patricia Palmer, was also dispatched from 60 McCulloch. The union denies that Ms. Palmer was dispatched from within Toronto.)

24. Second, the employer argues that for the purposes of section 10(3.1)(a) all of these 55 employees occupied the same position at the time of the second application (the "original application" for the purposes of section 10(3.1)(a)) as they did at the time of the fourth application (the "new application"). The employer's argument is predicated on the premise that an employee occupied the same position at the time of both applications if they were employed as a driver, driver trainer or spare, irrespective of from where they were dispatched. Once again the union rejects the premise of the employer's argument. It argues that an employee only occupied the same position if they were dispatched from the same base. It states that none of the 55 employees, including Ms. Goodman, meet this criterion.

25. If the union succeeds with its argument that the base from which an employee is dispatched is the critical factor in describing the employee's "position", then the application would not appear to be barred by section 10(3) of the Act by virtue of the operation of section 10(3.1) of the Act. If the 53 individuals who were dispatched from outside Toronto at the time of the second application continued to be dispatched from outside of Toronto at the time of the current application, they would not fall within the scope of the bargaining unit described in the current application. Similarly if Ms. Goodman and Ms. Palmer had continued to be dispatched from 60 McCulloch at the time of the current application they also would not fall within the scope of the bargaining unit described in the current application, given that I have concluded that the second exception to that bargaining unit are the employees of the employer based at its Etobicoke location, which is 60 McCulloch.

26. The dispute between the parties about the relevance of the base from which an employee was dispatched is essentially factual. Many days of evidence may be required to resolve this dispute. The question then becomes whether the Board should direct that the ballots be counted without prejudice to the employer's positions.

27. As noted, the employer strenuously resists the counting of the ballots. Its first argument is predicated on the assertion that there are no employees in the bargaining unit applied for and therefore section 9(1) requires the dismissal of the application. For the reasons stated above, I do not accept that this is the case.

28. The employer's second argument is that the application is subject to section 10(3) of the Act, with the result that the Board is precluded from considering the application at all, which includes counting the ballots. For the reasons stated above, whether the Board is precluded from considering the application as a result of section 10(3) of the Act can only be determined following a potentially lengthy evidentiary hearing. In my view, the Board's authority pursuant to section 110(16) to determine its own practice and procedure includes the authority to order the counting of the ballots prior to the determination of whether the Board is precluded from considering an application as a result of section 10(3), where the Board considers it appropriate to do so. This view is consistent with the approach that the Board has taken in other circumstances as illustrated by cases cited by the union, notwithstanding the fact that none of those cases reference section 110(16) of the Act. In *Nestle Canada Incorporated Trenton Foodservice Facility*, [2004] CanLII 26022 (O.L.R.B.), the Board directed that the ballots be counted in a displacement application for certification, notwithstanding the objections of the incumbent union, prior to a determination of whether the applicant had established that it was a trade union within the meaning of the Act. In *B.A. Banknote*, [1996] OLRB Rep. Nov./Dec. 906 and *Casino Niagara*, [2000] OLRB Rep. Jan./Feb. 17, the Board directed that the ballots be counted in applications for certification for units of security guards over

the objections of the responding employers, prior to determination of whether the certifications would give rise to a conflict of interest contrary to section 14 of the Act. None of these cases contain any discussion, but they are illustrative of a common practice of the Board.

29. Third, the employer argues that it will experience labour relations prejudice if the ballots were to be counted and the union were to win, but it is subsequently determined that the application is barred pursuant to section 10(3) of the Act. I accept that there may be some labour relations prejudice to the employer in these circumstances. In my view, however, that prejudice is outweighed by the prejudice to the employees in the bargaining unit arising from a competing scenario. Assume that after many days of hearing the Board issues a decision finding the application is not barred by section 10(3) and directs the ballots to be counted, but the union loses with the result that the Board issues a decision dismissing the application pursuant to section 10. On such a scenario, a further bar under section 10(3) would apply to the employees in the bargaining unit not only for one year from the date of that future decision, but effectively until the date of that decision. In my view, in the circumstances of this case, if there is to be a further bar pursuant to section 10(3) of the Act with respect to the employees in this bargaining unit, it should start to run as soon as practicable. Such an approach also has the virtue of avoiding unnecessary expense to the parties, not to mention waste of the Board's resources, should 50 per cent or more of the ballots already cast not be in favour of the union.

30. Accordingly, I direct that the ballot box be opened and the ballots which had been disputed by the employer on the basis that there was no one in the bargaining unit be counted, without prejudice to the employer's argument that the application is barred pursuant to section 10(3) of the Act. Those ballots that were also challenged on other grounds are not to be counted until the parties agree or the Board so orders.

31. The file is referred to the Manager of Field Services.

0044-08-HS Trudel & Sons Roofing Ltd., Applicant v. Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America; Goran Blanusa, Inspector, Responding Parties

Health and Safety – The Employer, supported by the union, sought suspension of an Order directing it to cease using a device that lifted workers on a platform some 45 feet to work on roofs, until a guard rail system that had been removed was repaired and certified to meet the manufacturer's specifications – The applicant asserted that the fall arrest system it required workers to use, together with its training provided protection at least equal to the protection afforded to workers by the guardrail – The Board found that if the removal of the guardrail system had not raised a concern about the stability of the platform, then the applicant would have demonstrated the fall arrest systems and its training and supervision were sufficient – The Board however found that the applicant had failed to provide any material from the manufacturer to indicate that the removal of the guard rail on one side of the platform would not affect the integrity of the platform or its stability – The absence of such information together with the material filed by the inspector from the manufacturer that modifications

should not occur without its consent, led the Board to conclude that the applicant had failed to demonstrate a strong *prima facie* case – Request to suspend dismissed

BEFORE: *Harry Freedman*, Vice-Chair.

DECISION OF THE BOARD; August 25, 2008

1. The applicant seeks, under section 61(7) of the *Occupational Health and Safety Act,* R.S.O. *1990*, c. O.1 as am. (the "Act"), suspension of the order issued by Inspector Goran Blanusa (the "Inspector"), dated March 4, 2008 in FV No. 5486017 (the "Order"). The Order directed the applicant to cease using the "Snorkellift ATB60 Serial #980966 until the guard rail system that had been removed is repaired in accordance to the manufacturer's specifications and certified by a professional engineer that it meets the said specifications."

2. Both the Inspector and Carpenters and Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America ("Local 27) filed responses to the application for suspension of the Order. Local 27 supports the applicant's request while the Inspector is opposed to it.

3. The Snorkellift ATB 60 is a lifting device that raises a platform to a height of 66 feet, although the applicant does not raise it higher than 45 feet. The platform has a working capacity of 500 pounds and two people. The applicant states that only one worker at a time is on the platform, which is used by workers to apply shingles to steep sloped roofs on houses. In order to allow the worker to have access to the sloped roof from the platform, a guard rail on one side of the platform was removed.

4. The project where the applicant was working when the Inspector issued the Order was a residential development of townhouses and semi-detached houses.

5. The applicant explained that the worker on the platform actually controls the movement of the platform. The worker loads several bundles of shingles on to the platform and then moves the platform into position with the open side of the platform positioned within several inches of the roof line to perform the necessary work on the roof.

6. The worker on the platform is tied off at all times while on the platform, lifting and moving it into place and while applying shingles to the roof. The workers are trained to ensure their lanyard is tightened so they cannot reach the open edge of the platform while the platform is being elevated. When the platform is in position at the roof, the applicant points out that the platform is so close to the roof, the space between the platform and the roof is so small a worker could not fall off the platform at the open end. Moreover, the worker is tied off with a fall arrest system at all times.

7. The applicant submits that the alternative to using the platform would be far more hazardous to workers. It submits that the steep roofs where workers installing shingles use the platform are difficult to work on safely with any other means. It claims the alternative method would be to use ladders, which are cumbersome and arguably creates more risk of injury since workers would have to carry bundles of shingles up the ladder to the roof if they could not use the platform.

8. The applicant's principal contention is that the removal of the guardrail allows the worker access to the roof where work is to be done in a manner that ensures the worker cannot fall. It

submits the fall arrest system it requires workers to use while on the platform together with the training they receive provides ample protection from falling which is at least equal to the protection afforded to workers by the guardrail on the platform.

9. Local 27 in its response adopts the submissions of the applicant and supports the applicant's request for suspension of the Order.

10. The Inspector in his submissions refers to section 25(1)(b) of the Act and section 95(2) of the Construction Regulation (O. Reg. 213/91) under the Act. Section 25(1)(b) of the Act provides:

> (1) An employer shall ensure that,
>
> (b) the equipment, materials and protective devices provided by the employer are maintained in good condition;

Section 95(2) of O. Reg. 213/91 states:

> (2) No modification to, extension to, repair to or replacement of a part of a vehicle, machine, tool or equipment shall result in a reduction of the safety factor of the vehicle, machine, tool or equipment.

11. The Inspector, while not accepting the applicant's submissions with respect to the modification of the platform together with the fall arrest system and training providing at least equal protection to the worker as a guardrail, focuses on the effect the removal of the guardrail has on the structural integrity of the platform.

12. The applicant referred to section 3 of O. Reg. 213/91 as the foundation for its argument that the change made to the platform gave protection for the safety of the workers who apply shingles to steep roofs using the platform "that is at least equal to the protection that would otherwise be given". Section 3 of O. Reg. 213/91 provides:

> 3. An employer, owner or constructor may vary a procedure required by this Regulation or the composition, design, size or arrangement of a material, object, device or thing as required by this Regulation,
>
> (a) if the procedure, composition, design, size or arrangement as varied affords protection for the health and safety of workers that is at least equal to the protection that would otherwise be given; and
>
> (b) if the employer, owner or constructor gives written notice of the varied procedure, composition, design, size or arrangement to the joint health and safety committee or the health and safety representative, if any, for the work place.

The applicant submitted the Inspector had failed to consider section 3 of O. Reg. 213/91 when deciding to issue the Order. The applicant contended that it has complied with the Act and the regulation by making the change to the platform while ensuring its workers receive the necessary training and implementing fall protection measures for all workers using the platform.

13. The Inspector contended the removal of the guard rail on one side of the platform created two hazards: a fall hazard and the hazard of a possible collapse of the platform and a consequential fall hazard. The Inspector contended that the fall arrest system and restraints used by the applicant would not prevent a worker falling to the ground is the platform collapsed or became unstable as a result of the removal of the guard rail.

14. If the removal of the guard rail did not raise a concern about the stability of the platform, then the applicant's submissions would be far more compelling. In my view, on the material filed, the applicant would have demonstrated the fall arrest systems, training and supervision it has implemented are sufficient when the workers use the platform in the manner described by the applicant to apply shingles to steep roofs to provide protection from fall hazards that is equal to having the guard rail in place, if it had established that the removal of the guard rail would not affect the platform's stability or operation of the platform. The applicant, as the Inspector points out, has not done so.

15. The Inspector referred to the Operator's Manual provided by Snorkel International, Inc. ("Snorkel"), the manufacturer of the Snorkellift ATB 60. The following statement is contained in the introduction to the manual:

> The following rules will help ensure the safety of personnel and help prevent needless downtime because of damaged equipment.
>
> ...
>
> 4. No modification shall be made to the equipment without prior written consent of Snorkel.

The Inspector also referred to the following statement in the Parts and Maintenance Manual for the Snorkellift ATB 60 set out in bold print under a warning symbol and heading "CAUTION":

> DO NOT modify this aerial platform without prior written consent of Snorkel Engineering Department. Modification may void the warranty, *adversely affect stability*, or affect the operational characteristics of the aerial platform. [emphasis added]

The Inspector pointed out that the applicant had not asserted it had obtained the written consent of Snorkel to modify the platform by removing the guardrail on one side of it. Moreover, the Inspector contends the applicant had "failed to provide an engineer's report that demonstrates that the removal of the guard rail has not affected the stability of the Lift."

16. The Inspector at paragraph 18 of his submissions states:

> The modifications to the Lift's platform were reviewed by the Manufacturer's Engineering Department. It is the opinion of the Manufacturer's Engineering Department that the modifications made to the Lift may have caused damage requiring the replacement of the Lift's platform.

While the statement of the Inspector in respect of the information he had received from the Snorkel's Engineering Department is clearly hearsay, nevertheless, that assertion together with the excerpts from Snorkel's Part and Maintenance Manual and Operator's Manual suggests, at the very least, there is some, and perhaps a significant, risk of collapse of the platform.

17. The Board notes the Inspector also submitted that although the applicant relied on section 3(a) of O. Reg. 213/91, the applicant has not asserted it had given written notice of the modification to the equipment to the joint health and safety committee or the health and safety representative at the workplace. He contends the applicant has not met the requirement of section 3(b) of that Regulation and therefore cannot rely on section 3(a) to justify the modification which appears to be contrary to section 95(2) of that Regulation and section 25(1)(b) of the Act. While the position taken by Local 27 in support of the applicant's request for suspension might well lead to the conclusion that the notice to the joint health and safety committee established, if required, under section 9 of the Act or the health and safety representative appointed under section 8 of the Act is a mere "technicality" since Local 27 may have a significant role in the selection of the worker representative on the committee or the appointment of the health and safety representative, section 3(b) of O. Reg. 213/91 does require the issuance of a written notice. Nevertheless, the failure to assert the requisite written notice was provided under section 3(b) of that regulation does not, in my view, preclude the Board from suspending the Order if it were satisfied the applicant had established the modifications provided at least equal, if not greater protection, to the workers from a fall hazard.

18. The Board has applied several criteria in assessing whether an Inspector's Order ought to be suspended pending the determination of the merits of an appeal, including whether the applicant has established a strong *prima facie* case for success on the appeal (See for example *Regional Municipality of Hamilton-Wentworth*, [1998] OLRB Rep. July/Aug. 709; *R. J. Dungey and Sons Ltd.*, [1999] OLRB Rep. Jan./Feb. 82; *Upper Grand District School Board,* [2000] OLRB Rep. Nov./Dec. 1253; *Carmeuse Lime (Beachville) Limited*, [2004] OLRB Rep. March/April 257; *Loblaw Companies East,* [2003] OLRB Rep. Sept./Oct. 856.)

19. The Board in *The Crown In Right of Ontario (Ministry of Correctional Services),* [2002] OLRB Rep. March/April 146 set out at page 148 the following rationale for requiring an applicant to demonstrate a "strong" *prima facie* case of success before suspending an Inspector's order:

> The general requirement for a strong prima facie case arises from the nature of a suspension request. In dealing with a request for a suspension, the Board can only consider what the parties are saying about potentially hazardous conditions in a specific workplace; it has no direct evidence. The Board may have little institutional experience with the specific hazard identified, and will likely have little knowledge of the particular workplace. The Inspector, a person who has examined the site and who possesses some expertise in the area, has found it necessary to issue an order. In such circumstances, the Board should exercise caution and restraint. It is appropriate in such circumstances to require the applicant to demonstrate a strong *prima facie* complaint.

In my view, that same rationale applies to the circumstances of this application.

20. The applicant asserts the change it made to the platform enhances the safety of workers applying shingles to the steep roofs where they work. The applicant has not, however, provided any

material from Snorkel to indicate that the removal of the guard rail on one side of the platform will not affect the integrity of the platform or its stability. The absence of that type of information together with the material filed by the Inspector from the Snorkel manuals which clearly indicate that such modifications should not be carried out without the consent of Snorkel, leads me to conclude that the applicant has not demonstrated it has a strong *prima facie* case on the merits of the appeal.

21. In these circumstances, the Board need not consider the other criteria both the Inspector and the applicant addressed in their materials.

22. Since the applicant has not demonstrated it has a strong *prima facie* case on the merits of its appeal, the Board, in the exercise of its discretion under section 61(7) of the Act, dismisses the applicant's request to suspend the Order pending the disposition of the appeal.

4187-06-R International Union of Operating Engineers, Local 793, Applicant v. **TWD Roads Management Inc.**, Responding Party

Certification – Employee – Status – The parties could not agree on whether certain employees were full-time or part-time – The employees in dispute ("Casual Maintenance Workers/ Operators – On Call") were paid for a minimum of twenty-five hours per week and were required to hold themselves available to the employer for those hours, albeit not at the workplace – The employer argued that these were part-time employees, relying on the Board's jurisprudence ("regularly employed for not more than twenty-fours hours" in four of the last seven weeks leading up to the application for certification) and asserting that the Board should consider "hours worked" as opposed to "hours paid" – The Board held that the disputed employees were required to demonstrate a full-time commitment to the employer and therefore should be included in the full-time bargaining unit – Count ordered

BEFORE: *Brian McLean*, Vice-Chair.

APPEARANCES: *Benjamin A. Barnes* and *Ken Lew* for the applicant; *D. J. Shields, Elaine Dray, A. Fernandez* and *Eric Lewis* for the responding party.

DECISION OF THE BOARD; July 22, 2008

1. This is an application for certification for a bargaining unit of full-time employees. A representation vote was held, but there were a large number of challenges to the right of individuals to cast ballots. Accordingly, the ballot box was sealed and the ballots not counted following the vote.

2. The parties have resolved many of the disputes regarding the right of employees to cast ballots and have their votes counted. However, the status of fourteen employees remains in dispute. These employees are in dispute because of one issue: whether they are part-time or full-time employees.

3. The Board heard argument on this issue. That argument was based on the following agreed statement of facts:

AGREED STATEMENT OF FACTS

1. The International Union of Operating Engineers, Local 793 filed an Application for Certification seeking to represent certain employees of the Responding Party on March 30, 2007.

2. The parties agreed upon the following bargaining unit description as set out in the Memorandum contained at Tab 1 of the Applicant's Book of Documents and with the conditions contained in that Memorandum:

> All employees of TWD Roads Management Inc. employed in the Townships of South Dundas and South Glengarry in the United Counties of Stormont, Dundas and Glengarry, Ontario save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff and persons regularly working not more than 24 hours per week.
>
> * Clarity Note. The foregoing bargaining unit description includes, but is not limited to, all work performed by employees working at or out of the yards located at 5120 County Road 31, Morrisburg, Ontario and 6310 County Road 27 Summerstown Station, Ontario regardless of the actual municipality in which the work is performed or yards are located.

3. There are eleven persons who cast ballots whose status is not now and has not been in dispute between the parties.

4. The parties have agreed that Rusty Link and Barry O'Sullivan were not eligible to cast ballots or to have their ballots counted and have agreed that the ballots for those two persons ought to be destroyed without being counted.

5. There are persons whose status remains in dispute. Those persons are:

   i. Charles Doyon
   ii. Barton Roy
   iii. Mark Westley*
   iv. Steve Smart
   v. Doug Austin
   vi. Floyd LaFave
   vii. Herb Aitkens
   viii. Dale Beckstead
   ix. Wayne Carr
   x. Ken Markell
   xi. Phil Sommerville
   xii. Kevin Markell
   xiii. Brian Paquette
   xiv. Dennis Stoppa

   * Mark Westley appears to have been recorded in error on the vote worksheet and in subsequent correspondence and communications with the Board as Mark Leslie or Leslie Mark. The parties agree that any references to Mark Leslie or Leslie Mark are in fact references to Mark Westley.

6. The persons whose status is in dispute held positions titled "Casual Maintenance Worker/Operator - On Call." When required, they would report to either the

Morrisburg or Summerstown Patrol Centres. All of the persons were required to maintain a minimum of a valid Ontario Class DZ driver's license. Their duties included:

- operating light and heavy maintenance equipment such as patrol trucks, loaders, plows, spreaders, combinations, tractors etc.
- performing routine equipment maintenance as required.
- filling out timesheets, reports and other operation documents as required.
- Assisting the Patrol Supervisor and other patrol staff in carrying out routine winter highway maintenance activities as required.
- Other duties as assigned.

7. The Responding Party has a contract for highway maintenance. The Responding Party's scope of responsibilities pursuant to that contract includes winter season snow-plowing, salting and road patrols. Equipment and materials are stored at the Patrol Centres.

8. The amount of highway work performed by the Responding Party's employees fluctuates with weather conditions. Inclement weather including snow and/or freezing rain necessarily increases the amount of work to be performed by the Responding Party. In contrast, good weather reduces the amount of work to be performed by the Responding Party.

9. The Responding Party is also required to monitor and limit the amount of hours worked by each employee in terms of time spent driving as a consequence of the Responding Party's CVOR.

10. The Responding Party structures its employees so that they are each placed on a call list based on a two week cycle. Approximately half the employees are placed on the first week of the cycle and approximately half on the second week of the cycle. During the first week of the cycle, opportunities for work are first offered to the employees on the list for that week of the cycle and offered to employees on the list for the second week of the cycle if employees on the first list are unavailable or if additional employees are required. Similarly, during the second week of the cycle, opportunities for work are first offered to persons on the list for that week of the cycle and then offered to employees on the list for the first cycle.

11. Each of the persons whose status is in dispute was employed pursuant to a contract of employment with the Responding Party that was effective on the Date of Application. The individual contracts of employment are contained in the Responding Party's Book of Documents and, for Mark Westley, at Tab 4 of the Applicant's Book of Documents. The parties agree to admit all of the contract documents in those Books of Documents as exhibits without the requirement for formal proof. Similarly, the parties agree that the Records of Employment and Contract Expiry Notice for each individual can be considered by the Board and entered as exhibits without formal proof. The Records of Employment and Contract Expiry Notice are contained at Tab 3 of the Applicant's Book of Documents.

12. Pursuant to the applicable contracts of employment, each person whose status is in dispute was contractually guaranteed a minimum of 25 hours pay for each week of

their employment with the Responding Party. For example, the contract between the Responding Party and Charles Doyon stipulates that:

> Remuneration will be at the rate of $16.00 per hour. You will be guaranteed earnings equal to a minimum of 25 hours per work week. Please note that the work week runs from Monday to Sunday.
>
> ...
>
> Please note that, if your contract begins or ends part way through a work week, guaranteed earnings will be pro-rated to reflect the actual length of time you are employed during that work week.
>
> Please also note that your guaranteed earnings will be adjusted for any period you are not available for "call-in" due to illness, bereavement or family emergency.

13. Pursuant to the applicable contracts of employment, each person was required to be on-call to attend and perform duties for the Responding Party as the Responding Party's needs dictated. For example, the contract between the Responding Party and Charles Doyon stipulates, in part, that:

> You will be assigned to a call-in shift schedule. **You must be available at all times when you are scheduled to be on-call** and be able to report to the Supervisor at the Summerstown Patrol Centre within one half hour of "call in" for assignment of your duties and responsibilities. If you do not respond you may not receive the guaranteed earnings equal to a minimum of 25 hours for that week and your contract may be terminated [emphasis in original].

14. As noted above, the employees in dispute were contractually entitled to earnings equal to a minimum of 25 hours per week. Time spent by employees performing duties operating plows, trucks or performing other assigned duties for the Responding Party would not be paid for unless and until they exceeded the 25 hour guaranteed pay. The Responding Party has prepared a chart of hours spent by each employee performing specific assigned duties (other than being on-call). Employees who are not required to perform duties (except for being on-call) are not required to be at the place of employment but must, in accordance with the contract "be able to report to the Supervisor at [the applicable patrol centre] within one half hour of 'call in' for assignment of [the employee's] duties and responsibilities. The parties accept that the weekly records of hours for the performance of work described in paragraph six (6) above that are contained in that document for each of the employees in dispute are substantially accurate and can be relied upon by the Board and that the chart can be admitted without the need for formal proof. The chart is contained in the Applicant's Book of Documents at Tab 2. The parties agree that the numbers contained in the extreme far right of the chart are an average recorded hours for each employee for the weeks of February 12-18 through to and including March 26-31, 2007. The averages do not include the week of February 5-11, 2007. The parties agree that they are each free to make whatever submissions they choose regarding the meaning or effect (if any) of any of the data contained on the chart. Nothing contained in the drafting of this paragraph represents agreement by the Responding Party that hours spent by employees being on call represents hours of work for the purpose of this case.

15. The parties join issue over whether the persons whose status is in dispute are employees within the bargaining unit description set out in paragraph two (2) above.

4. Among the documents referred to in the agreed statement of facts are the contents of employment contracts entered into between the company and individual employees. As noted, they contain, among others, the following provisions:

> You will be assigned to call-in shift schedule. *You must be available at all times when you are scheduled to be on-call* and be able to report to the Supervisor at the Morrisburg Patrol Centre within one half hour of "call in" for assignment of your duties and responsibilities. If you do not respond you may not receive the guaranteed earnings equal to a minimum of 25 hours for that week and your contract may be terminated.
>
> You must notify the Supervisor at the Patrol Centre as soon as possible if you are not available for "call in" due to illness, bereavement or a family emergency, and advise the length of time you anticipate you will not be available. Failure to do so may result in termination of this contract.

5. The bargaining unit description set out in the agreed statement of facts was agreed to as part of a settlement involving a number of applications for certification involving these parties. That settlement contained the following clauses:

> 5. The parties further agree that the agreed upon bargaining unit descriptions' exclusion of persons regularly working not more than 24 hours per week in paragraphs one (1) and three (3) above is without prejudice to the position of any party with respect to whether any challenged individual was regularly working not ore than 24 hours per week including what constitutes working for the purposes of the exclusion.
>
> 6. This Memorandum is entered into without prejudice and precedent by either party with respect to any other matters other than these three Applications for Certification and without prejudice to any parties' position on whether any person is eligible to cast a ballot and have that ballot counted by virtue of being employed within the agreed upon bargaining unit description.

6. The disputed employees performed services as follows:

Feb 5 - Mar 31								
TWD- Kingston / Ottawa								
	Feb 5-11	Feb 12-18	Feb 19-25	Feb 26-Mar 4	Mar 5-11	Mar 12-18	Mar 19-25	Mar 26-31
	Reg Hours	Reg Hours	Reg Hours	Reg Hours	Reg Hours	Reg Hours	Reg Hours	Reg Hours
Employee								
Charles Doyon	16	30	13.5	12.5	22.5	19.5	22.5	40.5
Barton Roy	28	36.5	13.5	13.5	22	21	22.5	0
Steve Smart	0	36.5	8.5	13.5	0	26.5	11	0
Doug Austin	6.5	44 + 6 O/T hours	4.5	19	12	24	0	0

Floyd LaFave	7.5	44 + 1.5 O/T hours	0	31	0	24	0	0
Herb Aitkens	21.5	44 + 23 O/T hours	16.5	27.5	13.5	25	10	0
Dale Beckstead	16	44 + 4 O/T hours	19	33.5	19.5	25	0	23
Wayne Carr	28	37	16	14	21	23.5	11.5	0
Ken Markell	37	27.5	17	12	17	26.5	6.5	0
Phil Sommerville	35.5	32	16	26.5	23.5	12.5	16	8
Kevin Markell	0	30.5	0	8	0	8	0	8
Brian Paquette	35	12.5	11.5	14	9	20.5	15	0
Dennis Stoppa	0	43.5	0	26.5	5	25.5	7	0

Discussion

7. For many years the Board has had a "guideline" in place for determining whether a particular employee is part-time or full-time. Under the guideline, employees are full-time if they work more than twenty-four hours per week in four of the seven weeks leading up to the application for certification. If an employee is on vacation during the seven week period, the Board ignores the vacation week and adds another week (or two depending on the length of the vacation) to the examination period. The guideline has not been considered or applied by the Board much in recent years as a result of changes to the Act which reduced the significance of the distinction between part-time and full-time employees in many applications for certification.

8. I note that the guideline was generally applied by the Board in circumstances where the Board's standard language to describe part-time employees was employees "regularly employed for not more than twenty-four hours". In deciding whether employees were regularly employed for more than twenty four hours per week the Board identified how many hours the employee worked in the seven week period preceding the application.

9. In this case, the parties did not agree on the standard "regularly employed" language. Instead they agreed to use the phrase "regularly working". Nevertheless, neither party argued that the distinction made a difference or suggested that the Board's guideline was not still appropriate. In fact the parties agree that the Board should apply the guideline in this case. However, they disagree about how to apply the guideline on these facts.

10. The aspect of the guideline which is the subject of this dispute is the "requirement" that employees "work" more than twenty-four hours per week. The employer relies on a strict interpretation of the term "worked" which, in its view, is the operative word of the guideline. It argues that employees must actually be at work providing services to be considered to be working. It says it is "hours worked" not "hours paid" and that this distinction is important. It relies on the fact that the Board's guideline has been in place for many years and members of the labour relations community rely on it to distinguish between full and part-time employees.

11. The union argues that the circumstances of this case bring these employees within the ambit of the guideline and therefore of the scope clause of the collective agreement; the fact that the employees are paid for a minimum of 25 hours per week, must be on call on thirty minutes notice and stand to lose the wage guarantee if unavailable, means they are regularly working for at least 25 hours per week even though they did not provide services for more than twenty four hours per week, four weeks out of seven leading up to the application.

12. One of the earliest enunciations of the guideline was in *Sydenham District Hospital*, [1967] OLRB Rep. May 135:

> 4. After the preliminary issue has been dealt with, a secondary question which must also be considered is which persons are "regularly employed for not more than 24 hours per week". The question under consideration is not intended to distinguish such persons from persons who are "irregularly" employed for not more than 24 hours per week. Either the persons with whom we are concerned are employed for *not* more than 24 hours per week or they are employed for more than 24 hours per week. The employees must fall into one or other of these two categories. There is no third category involved in this question.
>
> 5. In addition, the determination of this secondary question must be made as of the date the application is made, since the applicant's membership position is determined as of that date. The facts available as of that date cover the whole employment history of each individual employee. The Board, however, has usually taken into consideration only that period preceding the application which has been found to be both manageable and representative. While no fixed period has become the universal rule, it is interesting to note that in the case of chain grocery stores and supermarkets a definite pattern has developed. The period of one month immediately preceding the date of the making of the application has been found to be representative and is usually the period looked at to determine whether the employees are to be included in the full-time or part-time bargaining unit. Such one month period which is considered for the purpose of determining which *class* of employee a person is, happily corresponds with the one month period used to determine whether or not a person is an *employee* for the purpose of the count. However, no similar pattern has evolved in other industries.
>
> 6. In order to make this secondary determination, in industries apart from the chain grocery store industry, it is the Board's experience that it would be useful to look at the period of seven weeks immediately preceding the making of an application as being a manageable representative period in the vast majority of cases. Therefore, if such representative period is used and a person was employed for four or more of the seven weeks under consideration for *not* more than 24 hours per week, the Board would then be in a position to find that the person was *regularly* employed for *not* more than 24 hours per week. If, on the other hand, a person was employed for four or more of the seven weeks under consideration for *more* than 24 hours per week, the Board would be able to find that the person properly belongs in the "full-time" bargaining unit. It is, of course, recognized that a person may move from a *full-time* bargaining unit to *a part-time* bargaining unit depending on what period of employment is considered. The fixing of a reasonable firm period to be considered by the Board in making such a determination has the advantage of consistency which would permit the parties to know in advance what persons are to be considered.

13. In none of the cases relied on by the parties did the Board explain what it meant to "work" for more than 24 hours as there was no dispute that hours paid and hours worked were the same. In fact the Board indicated that one of attractive aspects of the test was that the Board could simply inspect the employer's records to determine how many hours an employee worked, since under the *Employment Standards Act* the employer must keep track of how many hours were worked by each employee. Perhaps the case where the Board most closely considered what it meant to "work" is *Holiday Inn Yorkdale*, [1976] OLRB Rep. Nov. 709 where the Board determined that it would not include a statutory holiday where the employee was paid and did not work in an assessment of hours worked for the purpose of determining whether he was part-time or full-time. The Board said:

> ... In the case of Maria Di Cio it was noted that notwithstanding having been paid for the Good Friday Holiday she was not working on that day and, therefore, the computation of the number of hours worked for that week ought not to include the holiday.

14. The Regulations to the *Employment Standards Act* define "work" for the purposes of determining whether an employee has been paid minimum wage. Section 6 of Ont. Reg. 285/01 states:

> 6.(2) Work shall not be deemed to be performed for an employer during the time the employee,
> (b) is not at the place of employment and is waiting or holding himself or herself ready for call to work.

Decision

15. The Board's guideline with respect to distinguishing part-time and full-time employees was established when the Board had a policy of separating part-time and full-time employees into different bargaining units at the request of either the union or the employer. That policy was based on an assessment that part-time and full-time employees had different communities of interest which could hinder collective bargaining. As the Board stated in *Leon's Furniture* [1976] OLRB Rep. May 232:

> ... we have learned through experience in such applications that part-time employees do not share a community of interest with full-time employees in many aspects of the collective bargaining scenario. More precisely part-time employees are more pragmatically concerned with immediate as opposed to long term benefits with respect to improving their terms and conditions of employment. In applying this proposition to more practical issues the part-time employee usually prefers to sacrifice long term pension, medical and other welfare benefits for a more substantial increase in wages or a longer vacation period. The nature of the seniority provisions contained in a collective agreement with respect to promotions, transfer and lay-offs does not always assume the same degree of significance to the part-time employee as it would the full-time employee. In other words, the Board has discerned a natural, inevitable schism in measuring the community of interests between the two categories of employees that invite separation into peculiar bargaining units. We have not been satisfied in the circumstances described herein that the applicant has shown us why we ought to depart from these past policy assumptions.

16. However, the Board's understanding of the community of interest between part-time and full-time employees has changed. The Board now is of the view, based on its observation of the experience in many workplaces that all employees, whether full-time or part-time, can bargain effectively together.

17. Since the change in the Board's approach there have been few, if any, cases before the Board where the Board's guideline has been applied. In fact, it is not at all clear why part-time and full-time employees should be separated at all, particularly in a case like this where there are employees who work under identical terms and conditions of employment and whose hours of work are completely dependent on weather conditions.

18. Nevertheless, this is the bargaining unit the parties have agreed to and particularly since the unit was agreed to as part of a broader settlement, it ought not to be disturbed by the Board.

19. In my view, the disputed employees at issue regularly work more than twenty-four hours per week and fall into the full-time bargaining unit. I come to that conclusion for the following reasons.

20. The starting point for my determination is the contract of employment which employees are required to sign as a condition of being employed for the employer. It is apparent the employees (regardless of the extent to which they actually provide services) have an enduring and full-time commitment to the employer for the duration of the contract. Employees are always on-call for the duration of the contract. They must at all times remain within one-half hour from the employer and in shape to drive. For the first twenty-five hours they provide services, they work without extra compensation. Guaranteed earnings will be "adjusted" if the employer is unable to contact the employee when needed. These facts suggest that the employees regularly work more than twenty-four hours per week.

21. Also in the employment contract, there are signs that the employer understood there was a difference between working and providing services (or as they call it: "actually working"). Premium pay would only be paid when "actual hours worked" exceeded a certain level. Similarly, statutory holiday pay is based on "actual regular hours worked". In other words, under the contract there is a suggestion of an appreciation that the employees are working when on call at home but are "actually working" when they provide services.

22. The Board must recognize that employees have a twenty four hour a day commitment. This commitment means that they regularly work more than 24 hours per week even if they do not provide services on a full time basis. While this might not be considered work for the purposes of assessing whether minimum wage has been paid under the *Employment Standards Act*, the employer's guarantee to employees of 25 hours pay recognizes the employees' commitment. The commitment is a full-time one and amounts to work.

23. In this respect the underpinning facts in the cases relied on by the employer are different. In those cases part-time hours left employees free to pursue other work etc. Here, that is simply not the case. Moreover, in all the cases relied on by the employer it was the employer which controlled the employees' hours of work. It could decide in advance how many hours an employee would work in a week. Here it is essentially the weather which determines the number of hours an employee performs services, especially on off weeks. To say that employees are not working at the time they

are on call could lead to serious labour relations problems including employees not knowing whether they are in or out of the bargaining unit at the time they are performing services.

24. It is also the case that the earlier Board cases did not have to determine what it meant to "work" more than twenty-four hours per week. In the normal context, the meaning of that term is clear. In my view it would be inappropriate to exclude employees from participation in collective bargaining – collective bargaining that impacts them directly – by relying on a narrow, technical interpretation of a Board guideline that was applied for different reasons.

25. The employer asserts that it relied on the Board's guideline in organizing its affairs and in responding to the application. I do not accept this argument. It is not at all clear from the agreed facts or documents that the employer relied on the Board's traditional guideline. Indeed, it placed employees on the list as agreed in the bargaining unit who fell outside the guideline's criterion on its analysis of the law.

26. The matter is referred to the Manager of Field Services so that the ballots may be counted.

1317-08-G Labourers' International Union of North America, Local 493, Applicant v. **Vista Sudbury Hotel Inc.**, Responding Party

Construction Industry Grievance – Practice and Procedure – The applicant failed to file and deliver its grievance referral to the responding party in accordance with s. 133 and Rule 34.2 [due to inadvertence in the solicitor's office, it was filed with the Board before being delivered to the employer] – The Board found it had the discretion under s. 133(4) to accept the referral, and, in these circumstances, did so, while also extending the time for the employer to respond – Grievance continues

BEFORE: *Harry Freedman*, Vice-Chair.

DECISION OF THE BOARD: August 7, 2008

1. The Board, by decision dated July 29, 2008 in this referral of a grievance to the Board for determination under section 133 of the *Labour Relations Act, 1995*, S.O. 1995, c. 1, as am., (the "Act") pointed out the applicant had failed to file and deliver the grievance referral to the responding party in accordance with section 133 of the Act and Rule 34.2 of the Board's Rules. As a result, the Board directed the applicant to file any submissions it wished the Board to consider when determining whether to exercise its discretion under section 133(4) of the Act and accept this grievance referral.

2. The applicant, by its solicitors, filed its submissions on August 5, 2008. The applicant accepts the grievance referral was not delivered before or at the same time it was filed with the Board, and explains that error occurred when the legal assistant responsible for preparing the packages of material and sending them to the responding parties and the Board had sent the material to the responding parties by courier on the day before she left for vacation. Rather than leave work to be covered by others in her absence, she sent the material that same day to the Board. It was, the

applicant submits, through inadvertence the relevant material was delivered to the Board before it was delivered to the other parties.

3. The applicant notes that in its transmittal letter to the Board, it had asked that the grievance referral be dealt with by the Board at the same time or immediately after the Board deals with its application under sections 69 and 1(4) of the Act (Board File No. 1316-08-R). It had filed the application under sections 69 and 1(4) of the Act at the same time it had referred this matter to the Board. The applicant had, in its grievance referral, waived its right under section 133(6) of the Act to have the hearing within 14 days of the date the grievance referral was received by the Board so that this matter might be heard or dealt with at the same time as or after the application in Board File No. 1316-08-R.

4. The applicant also points out that even if the Board refused to accept this referral, it is clear it would have the right to file it again. It refers to the Board's decision in *Modern Railings & Metalcraft Ltd.*, [2003] OLRB Rep. May/June 456 where the Board commented at page 459:

> The consequences of a refusal to accept the referral are not minimal, but such a decision is not fatal, either. The grievance, which is the genesis of the litigation, is not dismissed or disposed of. It continues to exist. If it were referred to this Board again, it might well be accepted. The Act does not provide for a bar to be imposed on subsequent referrals, as it does where an application for certification is dismissed or withdrawn in certain circumstances. Even if the Board were to refuse to accept a subsequent referral, the grievance might be referred to arbitration for final and binding determination pursuant to section 48 of the Act (see for instance *Kennedy Masonry Company Limited*, [1998] OLRB Rep. July/Aug. 622), or in the end the Minister has the authority to appoint an arbitrator under section 48(4).

The applicant submits that where there is no prejudice to the responding party if the Board accepts the referral and permits the responding party to file a Notice of Intent to Defend within five days after the Board issues a decision accepting the referral, the Board, by accepting the referral rather than refusing to do so and, in effect, requiring the applicant to file a new referral, avoids a new referral being filed and thereby makes better use of the Board's and the parties' resources.

5. The Board notes the applicant requested the Board to either accept the referral and "deem the referral of Grievance to Arbitration to have been filed with the Board after it was delivered to the Responding Party" or extend the time for the filing of the referral.

6. The Board in *Modern Railings & Metalcraft Ltd., supra,* after referring to two cases in which the Board "deemed" the referral to have been made after it had been delivered to the responding party, noted at page 458:

> In both cases, the dissenting decision found that while the solution of the majority made eminent good sense, the statute did not give the authority to "deem" an application to have been filed with the Board on a date other than the date on which it was received. There are specific examples in the statute where the Board is given such authority; section 133 is not one of them.

In my view, there is no statutory or legal basis for the Board to "deem" a grievance referral to have been filed on a date other than the date on which it is received by the Board. See Rules 3.4 and 3.5 of the Board's Rules of Procedure.

7. The Board, under section 133(4) of the Act, has the discretion to "refuse to accept a referral." In view of section 133(5) of the Act, which provides:

> In deciding whether or not to accept a referral, the Board is not required to hold a hearing and may appoint a labour relations officer to inquire into the referral and report to the Board.

it is clear to me the Board also has the discretion under section 133(4) to accept a referral.

8. The Board's discretion under section 133(4) of the Act is not, in my view, dependent upon an applicant complying with section 133(3). That is, although an applicant may have failed to comply with the requirement in section 133(3) of the Act to give a copy of the referral to the responding party at the same time it refers the grievance to the Board for determination, the Board may, I believe, still accept the referral since the discretion given to the Board under section 133(4) is not made subject to a grievance referral complying with section 133(3).

9. The applicant has persuaded me it is appropriate for the Board to exercise its discretion to accept this grievance referral despite it having been given to the responding party after it was filed with the Board. As the applicant points out, no useful purpose would be served in having the applicant simply refer the same grievance to the Board once again. More importantly, in this case, the applicant had waived its right under section 133(6) of the Act to have the hearing within 14 days of the date the Board received the referral. Thus, the responding party will have had ample time to prepare for the hearing of this matter if it files a Request for Hearing and Notice of Intent to Defend/Participate. Moreover, the merits of the grievance referral are also dependent on the Board making a determination in favour of the applicant in its application seeking relief under sections 69 and 1(4) of the Act in Board File No. 1316-08-R. Finally, I am satisfied the applicant's failure to comply with the procedure mandated by section 133(3) of the Act was clearly inadvertent arising from an error by a staff member in the applicant's solicitor's offices.

10. Therefore, the Board exercises its discretion pursuant to section 133(4) of the Act to accept the grievance referral filed by the applicant on July 25, 2008. I wish to make clear the Board is neither extending the time under section 133(3) of the Act for filing the grievance referral nor deeming the grievance referral to have been filed on a date other than the date on which it was filed, that is, July 25, 2008.

11. The Board sent a Confirmation of Filing to the responding party on July 29, 2008. The Board, pursuant to Rule 3.2 of the Board's Rules of Procedure, hereby extends the time under Rule 35.1 for the responding party to file a Request for Hearing and Notice of Intent to Defend/Participate (Form A-87) to five days, not including Saturdays, Sundays and holidays, from the date of this decision. If the responding party fails to file a Request for Hearing and Notice of Intent to Defend/Participate within that time, the Board may deal with this matter based on the material filed by the applicant and without further notice to the responding party.

12. This panel of the Board is not seized with this matter.

0353-06-ES (Court File No. 258/07) Dr. Oliver Bajor v. Arbitrage Research and Trading (U.K.) Ltd. and Ontario Labour Relations Board

Employment Standards – Judicial Review – Practice and Procedure – The Applicant sought judicial review of a Board decision upholding an Officer's refusal to issue an order to pay outstanding wages to him – The Board had found that the Applicant was not an employee at the relevant time – On judicial review, the Court held that the Board was correct not to postpone its own proceedings until the Applicant's Tax Court matter on Employment Insurance eligibility was resolved – Employment Insurance proceedings have different statutory schemes, purposes, parties, and available remedies, so their results are inapplicable to *Employment Standards Act* proceedings – Based on the evidence, the Board had reasonably decided that the Applicant was not an employee – Alternatively, the Board had found that no wages were owed to the Applicant, because the Applicant had already been paid substantially more than the minimum wage – Since the Applicant had led no evidence of his actual wage rate, the Board's reliance on the minimum wage was reasonable – The Applicant also complained that the Board's decision was libellous, in that it contained negative assessments of his credibility – The Divisional Court held that Vice-Chairs of the Board are protected from libel and slander claims – Application for judicial review dismissed

Superior Court of Justice (Divisional Court), Brockenshire, Lederman and Swinton JJ., July 28, 2008

BROCKENSHIRE J.:

[1] This was an application for judicial review of a decision of Ian Anderson, vice-chair of the Ontario Labour Relations Board (the OLRB) upholding the refusal of an employment standards officer under the *Employment Standards Act, 2000,* (the Act), to issue an order to pay wages to the applicant, which decision issued January 25, 2007, and also of a further decision of the said vice-chair issued August 9, 2007, denying the request of Dr. Bajor for reconsideration of his original decision.

[2] The alleged employer named in the original application under the Act was Arbitrage Research and Trading (U.K.) Ltd. (hereinafter ART (UK)). The application for judicial review did not name ART (UK). Counsel for the Ontario Labour Relations Board pointed out that the alleged employer was a proper party to this proceeding, and that Mrs. Lisa Bajor was present in the courtroom. It was not disputed that she was the sole shareholder and director of ART (UK). It was also not disputed that she is Dr. Bajor's mother. On consent, ART (UK) was added as a party before us and Mrs. Lisa Bajor was invited to and did address the court.

[3] Dr. Bajor (whose doctorate is in mathematics) had made a claim under the Act, alleging that during the period April 2004 to March 2005 he was entitled to be paid by ART (UK) the sum of $41,563.60, but only received $27,387.10, leaving $14,276.50 allegedly due to him. The Act provides a statutory scheme whereby an employment standards officer, after investigating a complaint by a worker, can issue an order requiring the employer to pay unpaid wages up to $10,000. Dr. Bajor followed this course, but the employment standards officer refused to issue the order sought. An appeal lies from that decision to the Ontario Labour Relations Board, which in effect holds a trial *de*

novo before it. As is customary, there was no transcript of the oral evidence, but the vice-chair of the board, who heard the matter, provided reasons, five pages long, for his dismissal of the application. Dr. Bajor objected to that decision and sought reconsideration. The vice-chair provided a further three pages of reasons for denying the application for reconsideration.

[4] As I gather it from the summary of the evidence before him in the written decision of the vice-chair, from the submissions of Dr. Bajor before us, and from the documents filed, Dr. Bajor had been an investment banker in England, who had been instrumental in setting up ART (UK) in England for the purposes of providing educational seminars to other investment bankers by himself and others. He was not an officer or director of ART (UK), but submitted he was an employee, being paid in kind – that is that all of his living expenses were being paid by ART (UK). To accomplish that he had a corporate credit card, and simply charged whatever he wanted to the corporation.

[5] It was clear from his submissions that whatever success the corporation may have had in earlier years, by at least the end of 2003 it was not generating any income. Further, from his submissions, the corporate bookkeeper was fired or left at the end of 2002, and there were no financial records after that. His submission was that he moved to Canada to develop software, and also to write a book, so that the company was not generating revenue in that time, but that did not mean it ceased to be obliged to pay him "in kind".

[6] Mrs. Lisa Bajor's side of the story also comes from the reasons below, her submissions before us and the documents, such as they are. She described her son as brilliant, but said that he had worked for a bank in London, England, was fired, sued, lost, and went bankrupt because he could not pay the legal fees. He created ART (UK), with him as the only real employee, being paid "in kind" to provide educational seminars, and it in fact did do some. However that ended in 2002 or 2003, and the company income with it. He continued to charge all of his expenses, including a very expensive London flat, to the company, and she covered the credit card bills personally to a total of something like $150,000, using up her savings. When she could no longer afford that, the company credit card was cut off, the lease on the London flat ended and he left England. She took him into her small two bedroom home in the Toronto area and allowed him to use her personal bank credit card. She let him set up a phone, fax, computer, etc., at her expense, so that he could continue to try to market seminars, but if he tried, he had no success. Although he worked on writing a book, he produced no income, and drew for his expenses on her personal bank credit card. When she could no longer afford that, she cut off the card and put him out of her house. He to some extent corroborates the sad ending, saying he disowned her in 2004.

[7] The relief sought in the application for judicial review was a reversal of the decision below, giving him the order for payment of $10,000 originally requested, failing which an order for a re-hearing "before a body other than the OLRB" and "that the OLRB process be reviewed for systemic and endemic negligence, incompetence, obstruction and highly unreasonable and improper conduct, with a view to impeach those who were guilty of improper conduct…"

[8] The 27 page "main points/outline" filed by Dr. Bajor raised some specific points, which were argued by him before us.

LIBEL

[9] Dr. Bajor raised, as a primary concern, his feeling that the wording of the decision of the vice-chair attacked his character and would damage his reputation. The Supreme Court of Canada in a

series of decisions (the most recent being *R. v. Walker* released by the Supreme Court June 6, 2008) has reiterated the need for judges in trial courts to give adequate reasons for the decisions they render so that the losing party knows why he or she has lost, interested members of the public can satisfy themselves that justice has been done and an appellate court can review the reasons for the decision, among other things. An explanation for a credibility finding, and for other findings, may seem offensive to the loser, but is essential for the above reasons, and for that reason, trial judges and persons such as the vice-chair who are performing a like function are protected from claims of libel or slander.

THE TAX COURT FINDING

[10] In addition to his application to the OLRB, Dr. Bajor also appealed to the Tax Court of Canada from a determination of the Minister of National Revenue that he was not in insurable employment with ART (UK), within the meaning of the *Employment Insurance Act*, during the period April 4, 2004 to March 30, 2005. Mr. Justice Weisman of the Tax Court of Canada delivered oral reasons in that case on September 24, 2007, the transcript of which was released November 21, 2007, long after the original decision and the reconsideration decision of the vice-chair, now being judicially reviewed. In the case before the Tax Court, there was evidence that in the period from April 4, 2004 to March 30, 2005 ART (UK) paid $3,063.60 for the storage of Dr. Bajor's goods in England, an average of $255.30 per month. The Tax Court judge concluded that for the purposes of the *Employment Insurance Act*, while he could not determine whether or not the other items in the alleged payments to him of a total of $27,287.10 were remuneration, at least the $3,063.80 could support an insurable contract of service so that the Minister's decision that there was no insurable contract of service was set aside.

[11] This particular issue of storage payments was not raised before us, nor apparently before the vice-chair, and in any event would have no direct relationship to the claim before the vice-chair, which was for an alleged balance of $14,276.50 due in payments in kind on account of wages, after credit for the $27,387.10 Dr. Bajor alleged he received.

[12] I accept the submissions of Mr. Stelmaszynski, counsel for the OLRB, that the Tax Court application was for a different purpose and objective, with the provincial *Employment Standards Act, 2000* establishing minimum rights and entitlements of all employees within its jurisdiction, while the *Employment Insurance Act* is federal legislation establishing a benefit conferral program on only those individuals who qualify. Further, the relief sought before the OLRB would have been an order for wages from the corporate respondent. In the Tax Court proceeding the claim was for access to the federal employment insurance benefit program. There were different parties in the two proceedings, the sole respondent in the Tax Court case being the Minister of National Revenue. Therefore even if the Tax Court case had proceeded before the board hearing, the doctrine of issue estoppel would have had no application: *Rasanen v. Rosemount Insurance Ltd.*, [1994] O.J. No. 200 (C.A.). Further, it is evident from the Tax Court decision that the judge there heard different evidence from both Dr. Bajor and Mrs. Lisa Bajor than was heard before the board.

[13] The vice-chair was required to make findings of fact on the evidence that was before him. He did so. There is no way in law that he, or for that matter this panel, could apply the decision of the Tax Court judge, in an entirely different court application, under a different statute, seeking a different result, to the claim for allegedly unpaid wages raised in this proceeding. Therefore there would be no point in the OLRB delaying the hearing as scheduled before it so that the proceedings in the Tax Court could be completed first.

THE STANDARD OF REVIEW

[14] Dr. Bajor, in his outline, and in oral argument, urged that the standard should be correctness because he had raised "technical matters" and added that "in any case there is the higher standard of properness". Counsel for the board submits that the standard is reasonableness.

[15] The *Employment Standards Act* provides a summary process to require employers to pay wages due to employees up to $10,000. Under the Act, s. 1(1):

> "wages" means,
> (a) monetary remuneration payable by an employer to an employee under the terms of an employment contract, oral or written, express or implied,
> ...
> (c) any allowances for room or board under an employment contract or prescribed allowances,
> but does not include,
> ...
> (e) any sums paid as gifts or bonuses that are dependent on the discretion of the employer and that are not related to hours, production or efficiency,
> (f) expenses and travelling allowances, ...

[16] Therefore, the vice-chair was required to find whether or not there was an employer-employee relationship between Dr. Oliver Bajor and ART (UK) between April 2004 and March 2005, and if so what was the monetary remuneration payable, which could include allowances for room and board but could not include expenses and travelling allowances or sums paid as gifts within the discretion of the employer, not related to hours, production or efficiency. These are all completely dependent on fact findings, and the interpretation of the Act. The standard for review of pure fact findings has always been reasonableness, and counsel for the board reminded us that s. 119 (14) of the Act provides that:

> ...a decision of the Board concerning the interpretation of this Act shall not be overturned unless the decision is unreasonable.

[17] In addition to s. 119 (14) of the Act, *Dunsmuir v. New Brunswick*, 2008 SCC 9 (CanLII), 2008 SCC 9, in para. 54 points out that reasonableness is often the appropriate standard for reviewing legal or statutory interpretations by an administrative tribunal by saying that:

> Deference will usually result where a tribunal is interpreting its own statute or statutes closely connected to its function, with which it will have particular familiarity: .... Deference may also be warranted where an administrative tribunal has developed particular expertise in the application of a general common law or civil law rule in relation to a specific statutory context: .... Adjudication in labour law remains a good example of the relevance of this approach. (Citations omitted)

[18] I do not accept Dr. Bajor's submission that the standard of review of the two decisions by the vice-chair should be higher than reasonableness.

CREDIBILITY

[19] In my view, essentially the vice-chair had before him a credibility trial as between Dr. Bajor and his mother, and after hearing them both preferred the evidence of Mrs. Lisa Bajor.

[20] It is the duty of a person hearing oral evidence to make findings of credibility, and reviewing courts should give deference to such decisions. Having heard Dr. Bajor and Mrs. Lisa Bajor make submissions before us, as well as having considered the vice-chair's written reasons, I find no basis for attacking his finding that Dr. Bajor was a most unsatisfactory witness, while accepting the evidence of Mrs. Lisa Bajor.

CONTINUING EMPLOYMENT

[21] The vice-chair found that neither Dr. Bajor's employment nor any arrangement for ART (UK) to pay him "wages" survived Dr. Bajor's move to Canada. This would be before April 2004, and an essential part of Dr. Bajor's case was that the employment arrangement and the "wage" arrangement continued through to March of 2005. The vice-chair, in para. 13 of his first decision, relied upon a letter dated May 15, 2004, which he found Dr. Bajor had composed, which referred to ART (UK) as being in a "quasi dormant state", and refers to Dr. Bajor, as a "quasi staff member" of ART (UK), while being a principal and director of some related but independent companies. Dr. Bajor, in his submissions before us pointed to a corporate structure outline for ART (UK) found at page 86 of the application record, indicating that while ART (UK) had been set up to provide seminars, several other related companies had been set up for different purposes, such as creating software, and eventually setting up a hedge fund. Dr. Bajor's submissions before us were that in Canada he was involved in trying to develop software, and at least looking into the possibility of setting up a hedge fund, as well as writing a book.

[22] The only evidence Dr. Bajor put before the vice-chair of work for ART (UK) in Canada was a copy of a contract for a seminar in 2002, and references in a sale ledger for billing for it, but with no indication of payment ever being received. He found that ART (UK) never had a valid contract to provide a seminar to the supposed client. By Dr. Bajor's own admission before us, the "line of business" of ART (UK) was giving seminars. From April 2004 to March 2005, if he was working on software programs, or a potential hedge fund, or writing a book, if it was for an employer, it would be for some employer other than ART (UK).

[23] Further, as was admitted and as the documents disclose, the corporate credit card of ART (UK) was cancelled, the lease on the premises used by ART (UK) and occupied by Dr. Bajor in England ended, and he was taken into his mother's home in the Toronto area, where he had some use of his mother's personal credit card until she had cut that off. All of that is supportive of Mrs. Lisa Bajor's evidence and of the vice-chair's finding that Dr. Bajor was not an employee of ART (UK) from April 2004 to March 2005.

THE MINIMUM WAGE FINDING

[24] Dr. Bajor objected to the alternate finding by the vice-chair, that in any event, Dr. Bajor admitted to receiving over $27,000 in the period in question, and as no wage rate had been proven, that would be well above the minimum wage rate for the year, so that no order could issue against the employer for payment. Dr. Bajor's objections are two-fold – that this is inconsistent with the evidence, and he had no notice that any suggestion of a minimum wage rate for him would be raised.

[25] Quite simply, success for Dr. Bajor involved two things – proof of employment, and proof of the amount of wages claimed as unpaid. Here, the first part of the decision of the vice-chair dealt with the employment issue. On the second part, the vice-chair found that no wage rate had been admitted or established and therefore simply relied on s. 23 of the Act, which requires an employer to pay employees at least the prescribed minimum wage. Before us, Dr. Bajor failed to point to any evidence, including documentary evidence, that would support his claim that $14,276.50 was due to him. His explanation was simply his allegation that in the previous year he had received $41,563.60, but from April 2004 to March 2005 he received only $27,387.10, so he was owed a further $14,276.50. There was no documentary evidence to which we were led to support the alleged $41,463.60 in the previous year. In view of the lack of evidence on the very important aspect of wages, I would find the decision of the vice-chair to be reasonable, and in accord with the Act.

CONCLUSION

[26] For the foregoing reasons, I would find that the standard of review on this application is reasonableness, and that the findings of the vice-chair, including his findings on credibility, in both his original decision and in the decision on the application for reconsideration are reasonable, as are the conclusions that he drew from such findings. Therefore, this application for judicial review must be dismissed.

3166-07-R (Court File No. 08-0015) Edgewater Gardens Long Term Care Centre v. Ontario Labour Relations Board, Ontario Public Service Employees Union

Certification – Judicial Review – Representation Vote – Stay – A request for a stay of a Board decision ordering a vote count was dismissed in March 2008, with reasons to follow – The Court held that the first part of the test for a stay requires that the applicant establish there is a strong *prima facie* case that the Board's decision is unreasonable, rather than that there was a serious issue to be tried – The applicant failed to pass this test, as well as the other criteria (irreparable harm; balance of convenience) – Stay application dismissed

Superior Court of Justice (Divisional Court), Madam Justice K. Carpenter-Gunn, June 18, 2008

Carpenter-Gunn, J. (Orally):

This is oral reasons for a decision in the matter of Edgewater Gardens LongTerm Care Centre, the Applicant, and Ontario Labour Relations Board, Ontario Public Service Employees Union, as Respondents. The nature of the application is that the applicant sought an order staying a decision of the Ontario Labour Relations Board dated January 16th, 2008 and February 27th, 2008, and also an order prohibiting the Board from taking further action with respect to an application for certification filed by the Ontario Public Service Employees Union on January 11th, 2008 pending the final determination of the Applicant's application for judicial review. I have been provided with lengthy written material from all three parties; the parties being the applicant and also the Board itself and the Union. As well I had the benefit of oral submissions from all three counsel.

The facts of this case are such: around January 2008, an organizing representative working for OPSEU was involved in organizing a drive with respect to employees employed by Edgewater

Gardens Long-Term Care Centre. An application for certification was prepared with respect to, and I quote, ' all employees of the Edgewater Gardens Long-Term Care Centre in the municipality of Haldimand County, save and except specified individuals set out in the material'. The material was prepared and an issue became the proper number that one would dial in order to affect service of a fax transmission. Before me was a document submitted with the motion record of the Applicant's, specifically the last item at tab E, which shows a document that deals with employment opportunities with the said employer and provides a fax number.

I have heard submissions from both the counsel for the employer and the Union about the specific document and I find that it was reasonable that the individual putting together the information for fax transmission would not be satisfied with that, and instead there is evidence before me that a phone call was initially made to obtain a fax number for the appropriate individual and in fact the affidavit before me also sets out that a second call was made to establish what the appropriate number was. There have been various rulings made by the Board in this matter to date, all of a procedural nature.

The beginning of those rulings as relates to me specifically today is the January 16th, '08 ruling which is at tab A of the Applicant's material, directing that a representative vote be taken January 18th, 2008. There is also subsequent rulings from the Board. One specifically, February 27th, 2008, wherein the Board determined after written submissions from the parties that the application was properly served and full reasons were provided at that time. The Board gave two days to the employer to make submissions. There is then a further ruling from them, which is Item 11 in the Applicant's material, and it's dated March 11th, 2008, and I am specifically quoting paragraph nine where it indicates the Responding party was given an opportunity to provide reasons why the ballots should not be counted and has not done so.

I found it very helpful in this proceeding that counsel for the Board provided a factum too to assist in terms of the regular protocol that one follows in matters of this nature. As I have heard today, the Board has yet to determine substantive issues raised in the application for certification. The Board has exclusive jurisdiction to determine all questions of fact and law in any matter before it. The Board in question is a quasi-judicial body with a mandate to supervise the province's statutory industrial relations regime, codified in the *Labour Relations Act, 1995*.

It was clear to me upon reading the material and hearing submissions of counsel that there is an emphasis on dealing with matters in a timely fashion. There are specific provisions within the *Act*, certification provisions, that make it clear that an employer, if it disagrees with the union's description of a proposed bargaining unit or the union's estimated number of individuals in a unit, must file its response to the application within two days of receiving the application. It is clear to me that the mandate is to deal with things in a summarily [sic] fashion, and not to drag out matters. As indicated previously the wheels were set in motion in January of 2008 to bring about a representative vote of the individuals involved. Here we are almost at April of 2008.

The issue here is the test that the applicant must meet in order to satisfy me to provide the stay that the Applicant is seeking. I have heard submissions from the Applicant that the test is one of a a serious issue to be tried, and I have heard from the two responding counsel that the appropriate test is a strong *prima facie* case. I have had the opportunity of reviewing the factums and the books of authority that counsel have provided, and I have determined that the appropriate test to look at, the first prong of the test, is whether or not there has been a strong *prima facie* case. I have been assisted

by looking at the decisions of *Ellis Don Ltd.*, *Sobeys*, and thirdly the *International Union of Bricklayers and Allied Craftworkers* decisions, referred to in the material before me.

In my view based on the material before me and the submissions that I have heard today, the applicant does not satisfy the requirements of a strong *prima facie* case that the Board's decision is patently unreasonable. And I am quoting paragraph 22 of the factum of the respondents, Ontario Public Service Employees Union, where it says in the factum:

> The Board's decision is protected by the strong prohibitive [sic] clause contained in Section 110 of the *Labour Relations Act* R.S.O. 1990, Chapter L.2. On the judicial review the Court should not interfere with the Board's decision unless it is patently unreasonable. This is a high standard, and on a motion for a stay a strong *prima facie* case must be made out that that high threshold can be met before a stay should be granted. The emphasis must be on the word "strong", and must go beyond simply what may be an arguable case.

In this particular case, the Board conducted an inquiry within the jurisdiction which is conferred upon it by the *Labour Relations Act.* As I indicated previously a reconsideration of the decision was made February 27th of 2008 and there were fulsome reasons given, specifically about the issue of proper service which appears to be the starting point of the applicant's submissions about why it is he says that I should exercise my discretion and grant the stay. I am not convinced.

I then look at the issue of the irreparable harm, and again I have read the decisions in this regard. The other issue is that of balance of convenience. It is my view that the irreparable harm and the evidence of that must be clear, and not speculative. I could not glean from the Applicant's submissions as to what in this specific case the irreparable harm was. We are not at the point in this application of dealing with the procedural issues. The counsel for the Union freely admitted if it turns out that when the vote is taken there are not enough votes to satisfy the application, then that will be the end of the matter. With respect to the balance of conveneince I find the favour of the Union.

As I said previously the idea of the Labour Relations Board and that specialized complement of individuals involved with it and the statute and the regulations is to expedite matters and give individuals quick decisions involving a very specialized area of expertise. Indeed if one looks at this from a policy analysis situation the *Superior Court of Justice* would get bogged down if we were to look at and place stays in situations like this on a regular basis. In my view, it should be a very isolated situation where the Applicant has met the very strict criteria of showing the strong, and I emphasize strong, *prima facie* case before a Justice of this Court should grant a stay. In conclusion, it is my view that the Applicant has not met the test for granting a stay of the Board's decision, and I would now like to hear submission as to costs.

0482-08-R (Court File No. 08-CV-00358887) Stock Transportation Ltd. v. Teamsters Local Union No. 938 and Ontario Labour Relations Board

Bar – Bargaining Unit – Certification – Judicial Review – The employer argued on judicial review that the Board must determine whether a bar existed pursuant to s. 10(3), prior

to counting the votes – The court held the Board was interpreting its enabling statute; that it addressed labour relations principles in its reasons, including consequences of delay and possible prejudice to both sides; and that the Board was exercising its specialized expertise – The court did not agree that the issue was a threshold jurisdictional issue, but rather a procedural and administrative order, the type the court "should be loath to interfere along the way with" – Application dismissed

Superior Court of Justice, Justice D. Aston, August 20, 2008

Endorsement

The Amended Notice of Application for judicial review seeks to quash or suspend Orders of the Board dated July 11, 2008 and August 15, 2008 (providing that the votes of May 16, 2008 be counted) relying upon s. 10(3) of the Act.

The Board did not ignore or fail to consider s. 10(3). It heard evidence and submissions over the course of two days, then reconsidered the July 11, 2008 decision based on further submissions from the employer.

In considering s. 10(3), the Board was interpreting its enabling statute. It deferred a decision on the merits of the employer's position respecting the s. 10(3) bar but made a procedural and administrative order that the votes be counted, without waiting for the determination of the s. 10(3) issue. In doing so the Board addressed labour relations principles in its reasons, including the consequences of delay and possible prejudice to both sides. It exercised its specialized expertise within the context of the Act and its decision is entitled to substantial deference.

The employer asserts that s. 10(3) is a bar to the Board even considering the application for certification, not just a bar to the granting of certification. It therefore characterizes the issue as a threshold jurisdictional issue which must be decided by the Board, as a question of the Board's *vires*. I disagree. I am reluctant to brand as jurisdictional an issue that is doubtfully so. See *Dunsmuir v. New Brunswick* [2008] S.C.J. No. 9 at paragraph 59.

Clearly, the Board will have to decide the s. 10(3) issue before it considers whether to ultimately grant or refuse the application for certification, but in the overall context of the legislation (reading it purposefully and as a whole and bearing in mind the important obiter in *Maystar General Contractors Inc.* [2008] O.J. No. 1353 at para's 42-44), the Court should be loath to interfere along the way with procedural and administrative orders, or the Board's ability to manage its own practice and procedure. That is the true nature of the Orders of July 11 and August 15.

The application is dismissed. If counsel are unable to agree on costs, brief submissions may be made in writing in the next 15 days.

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JUNE 2008

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

3821-05-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Amacon Construction Ltd. and/or Amacon Development Group Inc. (Respondent)

Unit: "all construction labourers in the employ of Amacon Construction Ltd. in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, in all sectors of the construction industry other than the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

3161-07-R: Universal Workers' Union, Labourers' International Union of North America Local 183 (Applicant) v. Democrat Homes Ltd. (Respondent)

Unit: "all construction labourers in the employ of Democrat Homes Ltd. in all sectors of the construction industry in the County of Simcoe and the District Municipality of Muskoka, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

3883-07-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. 825819 Ontario Inc. (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of 825819 Ontario Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of 825819 Ontario Inc. in all sectors of the construction industry within a radius of 33 kilometers (approximately 20 miles) of the North Bay post office, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

0103-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Safeguards Technology LLC (Respondent)

Unit: "all construction labourers in the employ of Safeguards Technology LLC in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Safeguards Technology LLC in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0107-08-R: Plumbers Residential Council, Ontario (Applicant) v. McConnell Plumbing and Heating Limited (Respondent)

Unit: "all plumbers, plumbers' apprentices, steamfitters and steamfitters' apprentices in the employ of McConnell Plumbing and Heating Limited in all sectors of the construction industry in the County of Brant and that portion of the Regional Municipality of Haldimand Norfolk coming within the former County of Norfolk and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (8 employees in unit)

0199-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Safeguards Technology LLC (Respondent)

Unit: "all construction labourers in the employ of Safeguards Technology LLC in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Safeguards Technology LLC in all sectors of the construction industry in the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (38 employees in unit)

0636-08-R: Sheet Metal Workers' International Association, Local 285 (Applicant) v. Applewood Air Conditioning Ltd. (Respondent)

Unit: "all journeymen and apprentice refrigeration, air conditioning and fireplace mechanics in the employ of Applewood Air Conditioning Ltd. in all sectors of the construction industry excluding the industrial, commercial and institutional sector, in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham; the Regional Municipality of Durham (except for the Towns of Ajax and Pickering), the geographic Township of Cavan in the County of Peterborough and the geographic Township of Manvers in the County of Victoria; the County of Simcoe and the District Municipality of Muskoka; and the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, save and except non-working foremen and persons above the rank of non-working foreman" (16 employees in unit)

0676-08-R: United Brotherhood of Carpenters and Joiners of America, Local 446 (Applicant) v. 1584891 Ontario Ltd. operating as Arc Wall & Ceiling Systems (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of 1584891 Ontario Ltd. operating as Arc Wall & Ceiling Systems in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all carpenters and carpenters' apprentices in the employ of 1584891 Ontario Ltd. operating as Arc Wall & Ceiling Systems in all sectors of the construction industry in that portion of the District of Algoma south of the 49th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0681-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. N.J. Pollitt Demolition and Lumber Ltd. (Respondent)

Unit: "all construction labourers engaged in the wrecking, demolition, dismantling or salvage of buildings and structures in the employ of N.J. Pollitt Demolition and Lumber Ltd. in the industrial commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers engaged in the wrecking,

demolition, dismantling or salvage of buildings and structures in the employ of N.J. Pollitt Demolition and Lumber Ltd. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

0718-08-R: Labourers' International Union of North America, Local 527 (Applicant) v. 882761 Ontario Ltd. c.o.b. as Stevco Masonry (Respondent)

Unit: "all construction labourers in the employ of 882761 Ontario Ltd. c.o.b. as Stevco Masonry in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of 882761 Ontario Ltd. c.o.b. as Stevco Masonry in all sectors of the construction industry in the City of Ottawa and the United Counties of Prescott and Russell, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit)

0854-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. EP Siding Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of EP Siding Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all carpenters and carpenters' apprentices in the employ of EP Siding Inc. in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman, and save and except persons covered by the Exterior Cladding Installation Collective Agreement between the Responding Party and the Carpenters and Allied Workers Local Union 27 of the United Brotherhood of Carpenters and Joiners of America" (2 employees in unit)

0882-08-R: The International Union of Painters and Allied Trades, Local Union 1904 (Applicant) v. Glass Employees Ltd. (Respondent)

Unit: "all journeymen and apprentice glaziers and metal mechanics in the employ of Glass Employees Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all journeymen and apprentice glaziers and metal mechanics in the employ of Glass Employees Ltd. in all sectors of the construction industry in that portion of the District of Algoma south of the 49th parallel of latitude, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (5 employees in unit)

0908-08-R: Construction Workers Local 53, affiliated with Christian Labour Association of Canada (CLAC) (Applicant) v. W.B. & B. Masonry Inc. (Respondent)

Unit: "all bricklayers, bricklayers' apprentices, stonemasons, stonemasons' apprentices and construction labourers in the employ of W. B & B Masonry Inc. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

0909-08-R: Labourers' International Union of North America, Local 625 (Applicant) v. Pave-Pro (Respondent)

Unit: "all construction labourers in the employ of Pave-Pro in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, all construction labourers in the employ of Pave-Pro in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional

sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

Bargaining Agents Certified Subsequent to Vote

0520-07-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Compass Group Canada (Beaver) Ltd. (Respondent)

Unit: "all employees of Compass Group Canada Limited employed in the Company operations at Chartwells Education Dining Services at 100 Elm Drive West, 1305 Cawthra Road, 2524 Bromsgrove Road, 2021 Dundas Street West, 3575 Fieldgate Drive, 1490 Ogden Avenue, 2665 Erin Centre Boulevard, 1324 Lorne Park Road, 6700 Edenwood Drive, 70 Mineola Road East, 50 Bristol Road in the City of Mississauga and at 32 Kennedy Road North and 275 Brisdale Drive in the City of Brampton, save and except Hub Managers and persons above the rank of Hub Manager, and Office and Clerical Staff, site supervisors and unit supervisors" (56 employees in unit)

0223-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Ethiopian Association in the GTA and Surrounding Regions (Respondent)

Unit: "all employees of Ethiopian Association in the GTA and Surrounding Regions in the City of Toronto save and except the Executive Director" (24 employees in unit)*(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	2

0258-08-R: Canadian Union of Public Employees (Applicant) v. Montfort Hospital (Respondent)

Unit: "all technicians and technologists working in the Laboratory Department and technicians and technologists working in the x-ray and respiratory services of the Diagnostic Imaging Department, of the Montfort Hospital in the City of Ottawa, save and except supervisors and persons above the rank of supervisor" (99 employees in unit)*(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	102
Number of persons who cast ballots	64
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	0

0294-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Scott Environmental Group Limited (Respondent)

Unit: "all employees of Scott Environmental Group Limited working in and out of the City of Kingston including working foremen/supervisors and save and except persons above the rank of supervisor as well as office, clerical and sales staff and laboratory technician and managers" (26 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	28
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	20
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	0

0305-08-R: Teamsters Local Union No. 419 (Applicant) v. Heritage House Mississauga Partnership o/a Heritage House Retirement Home (Respondent)

Unit: "all employees of Heritage House Mississauga Partnership o/a Heritage House Retirement Home in Mississauga, Ontario, save and except the Dietary Supervisor, Director of Care, General Manager and office, clerical and sales staff" (40 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	43
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	33
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	2

0326-08-R: Canadian Union of Public Employees (Applicant) v. 1107989 Ontario Ltd. operating as Nutra 2000 (Respondent)

Unit: "all employees employed by 1107989 Ontario Ltd. operating as Nutra 2000, at St. Peter and Paul in the City of Toronto save and except supervisors and persons above the rank of supervisor" (12 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	12
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0368-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Waterford Building Maintenance Inc. (Respondent)

Unit: "all employees of Waterford Building Maintenance Inc. employed at 281 and 285 Mutual Street, Toronto, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff" (9 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0419-08-R: UNITE HERE Canada (Applicant) v. Nordic Gaming Corporation - Fort Erie Racetrack (Respondent)

Unit: "all hostesses employed by Nordic Gaming Corporation at the Fort Erie Race Track" (10 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0448-08-R: Canadian Union of Public Employees (Applicant) v. Aboutown Medical Transfer (Respondent)

Unit: "all medical transfer attendants employed by Aboutown Medical Transfer Inc. services in the Region of Waterloo and cities of Brantford and Walkerton save and except supervisors, persons above the rank of supervisors and dispatchers" (71 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	61
Number of persons who cast ballots	43
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	29
Number of segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names do not appear on voters' list	4

Number of spoiled ballots	0
Number of ballots marked in favour of applicant	33
Number of ballots marked against applicant	9
Number of ballots segregated and not counted	1

0454-08-R: Ontario Nurses' Association (Applicant) v. The Westbury Long Term Care Residence (Respondent)

Unit: "all registered nurses and nurses with temporary certificate of registration employed by Regency LTC Operating Limited Partnership on behalf of Regency Operator GP Inc. as General Partner o/a The Westbury at 495 the West Mall, Etobicoke, Ontario, save and except supervisors, persons above the rank of supervisors, Director of Care, Infection Control Practitioner and Quality Assurance Manager." (24 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	32
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	15
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	2

0468-08-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (Caw-Canada) (Applicant) v. London Hospital Linen Service Inc. (Respondent)

Unit: "all part time employees at London Hospital Linen Service Incorporated in the City of London, Ontario, save and except supervisors, persons above the rank of supervisor, office and sales staff and drivers" (70 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	64
Number of persons who cast ballots	43
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	42
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	1

0480-08-R: Labourers' International Union of North America, Local 1059 (Applicant) v. The Roman Catholic Episcopal Corporation of the Diocese of London, Ontario, as Owner and Operator of St. Peter's Cemetery London (Respondent)

Unit: "all employees at St. Peter's Cemetery and at the Holy Family Chapel Mausoleum, in the City of London, save and except persons covered under the subsisting collective agreement with Service Employees International Union, and save and except supervisors, and persons above the rank of supervisor" (6 employees in unit)

Number of names of persons on revised voters' list	8

Number of persons who cast ballots	6
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0501-08-R: Teamsters Local Union No. 879 (Applicant) v. E & E Seegmiller Limited (Respondent) v. United Food and Commercial Workers International Union, Local 175 (Intervener)

Unit: "all truck drivers employed by E & E Seegmiller Limited engaged in construction projects within the counties of Wellington, Brant, Norfolk and the Regional Municipality of Waterloo in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foremen." (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0545-08-R: United Food & Commercial Workers, Local 206 (Applicant) v. Compass Group Canada (Respondent)

Unit: "all employees of Compass Group Canada at the Lester B. Person International Airport, Malton, Ontario, save and except assistant managers, persons above the rank of assistant managers, chef, sous chefs, maitre d's and office staff and those employees covered under a collective bargaining agreement" (8 employees in unit) *(Clarity Note) (Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	2

0548-08-R: UNITE HERE (Applicant) v. Aramark Canada Ltd. (Respondent)

Unit: "all employees of Aramark Canada Ltd., at the Toronto French School, on Lawrence Avenue East, in the city of Toronto, Ontario, save and except managerial employees, head chef, office and clerical staff, and students" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	3
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	3

0575-08-R: Ontario Public Service Employees Union (Applicant) v. Woodstock and District Developmental Services (known as WDDS) (Respondent)

Unit: "all developmental service employees of Woodstock and District Developmental Services in the City of Woodstock, save and except administrative employees, supervisors and persons above the rank of supervisor and students employed in the school vacation period" (160 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	163
Number of persons who cast ballots	141
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	138
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	90
Number of ballots marked against applicant	48
Number of ballots segregated and not counted	3

0576-08-R: United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. Royal Host Limited Partnership c.o.b. Holiday Inn Trenton (Respondent)

Unit: "all employees of Royal Host Limited Partnership c.o.b. as Holiday Inn Trenton located at 99 Glen Miller Road in the City of Quinte West, Ontario, save and except supervisors, persons above the rank of supervisor, office, clerical and sales staff, front desk staff, night auditors, banquet captain, university co-op students and students employed during the school vacation period" (41 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	41
Number of persons who cast ballots	32
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	31
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	27
Number of ballots marked against applicant	5

Number of ballots segregated and not counted	0

0596-08-R: International Union of Operating Engineers, Local 793 (Applicant) v. Sterling Crane - Division of Procrane Inc. (Respondent)

Unit: "all employees of Sterling Crane - Division of Procrane Inc., working in the City of Greater Sudbury, Ontario, save and except non-working forepersons and persons above the rank of non-working foreperson, office, clerical and sales staff and persons already covered by an existing collective agreement" (2 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0632-08-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Extendicare (Canada) Inc. (Respondent)

Unit: "all journeyperson and apprentice refrigeration and air conditioning mechanics and maintenance mechanics employed by the Employer performing maintenance and/or service activities in and/or dispatched out of the Employer's corporate office at 3000 Steeles Avenue East, Markham, Ontario, save and except persons above the rank of working foreperson and persons for whom bargaining rights have been granted to another certified bargaining agent" (2 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0648-08-R: International Association of Machinists and Aerospace Workers (Applicant) v. Stoney Creek Coatings Corp. (Respondent)

Unit: "all employees of Stoney Creek Coatings Corp. in the City of Hamilton, save and except supervisors, persons above the rank of supervisor, office and sales staff" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	9
Number of persons who cast ballots	9
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6

Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	1
Number of ballots segregated and not counted	3

0651-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Acer America Corporation (Respondent)

Unit: "all employees of Acer America Corporation in the City of Mississauga, save and except supervisors and persons above the rank of supervisor, office and sales staff" (57 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	60
Number of persons who cast ballots	58
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	57
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	43
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	1

0682-08-R: Ontario Public Service Employees Union (Applicant) v. Meaford Nursing Home Ltd. (Respondent)

Unit: "all employees of Meaford Nursing Home Ltd. located in the Municipality of Meaford, Ontario, save and except Managers and those above the rank of Manager, Registered and Graduate Nurses" (86 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	86
Number of persons who cast ballots	75
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	68
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	40
Number of ballots marked against applicant	29
Number of ballots segregated and not counted	6

0691-08-R: International Association of Machinists and Aerospace Workers (Applicant) v. Dyaltech Inc. (Respondent)

Unit: "all employees of Dyaltech Inc. in the Region of Peel, save and except supervisors, persons above the rank of supervisor, office and sales staff" (19 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	0
Number of persons who cast ballots	15
Number of ballots excluding segregated ballots cast by persons whose names	14

appear on voter's list	
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	11
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	1

0700-08-R: Canadian Union of Public Employees (Applicant) v. The Corporation of the City of Brockville (Respondent)

Unit: "all part time transit employees of the Corporation of the City of Brockville in the County of Leeds, save and except supervisors and persons above the rank of supervisor" (7 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

0707-08-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Compass Group Canada (Beaver) Ltd. at Mississauga (Respondent)

Unit: "all employees of the responding party employed in the Company operations at Extendicare Canada Inc. located at 855 John Watt Blvd., Mississauga, ON L5W 1G2 working less than 20 hours per week, save and except Supervisors and Assistant Supervisor, Office and Sales Staff and persons above the rank of Supervisor, Office and Sales Staff and employees covered by a subsistent collective agreement" (10 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	10
Number of persons who cast ballots	7
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0717-08-R: United Food and Commercial Workers International Union, Local 175 (Applicant) v. Compass Group Canada (Beaver) Ltd. (Respondent)

Unit: "all employees of the responding party employed in the Company operations at Extendicare Canada Inc., located at 7891 McLaughlin Road, Brampton, ON L6Y 5A7 and 150 Dunn Avenue, Toronto, ON M6K 2R6

working less than 20 hours per week, save and except Supervisor and Assistant Supervisors, persons above the rank of Supervisor, Office and Sales Staff and persons covered by a subsisting collective agreement" (18 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	25
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0732-08-R: Canadian Union of Public Employees (Applicant) v. Bloorview School Authority (Respondent)

Unit: "all Educational Assistants employed by the Bloorview School Authority in the City of Metropolitan Toronto, save and except supervisors, persons above the rank of supervisor and those persons already represented by a trade union" (29 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	30
Number of persons who cast ballots	30
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	25
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	24
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	3

0764-08-R: Teamsters Local Union No. 879 (Applicant) v. Lafarge Canada Inc. (Respondent)

Unit: "all employees of the employer at its cement plant in the Town of Waterford, save and except batcher, persons above the rank of batcher, sales and office staff" (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

0773-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Asbury Building Services Inc. (Respondent)

Unit: "all employees of Asbury Building Services Inc. employed at 30 St. Clair Avenue West, in the City of Toronto, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff" (8 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	7
Number of persons who cast ballots	4
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0790-08-R: Canadian Union of Public Employees (Applicant) v. Genesis Gardens Inc. o/a Foyer St. Viateur Nursing Home (Respondent)

Unit: "all employees of Genesis Gardens Inc. o/a Foyer St. Viateur Nursing Home in the town of Limoges, Ontario, save and except office staff, supervisors and persons above the rank of supervisor" (68 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	69
Number of persons who cast ballots	62
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	62
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	43
Number of ballots marked against applicant	19
Number of ballots segregated and not counted	0

0793-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Omni Facility Services Canada Limited (Respondent)

Unit: "all employees of Omni Facility Services Canada Limited employed at Peterborough Square, 360 George Street, Peterborough Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff" (11 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0

Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

0833-08-R: Canadian Union of Public Employees (Applicant) v. Centre de Counselling Familial Timmins Inc./ Timmins Family Counselling Centre Inc. (Respondent)

Unit: "all employees of Centre de Counselling Familial Timmins Inc./ Timmins Family Counselling Centre Inc. in the City of Timmins, Ontario, save and except supervisors and persons above the rank of supervisor" (14 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	8
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	2
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

2544-07-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. 1046627 Ontario Limited c.o.b. Coram Construction Group (Respondent)

Applications for Certification Dismissed Subsequent to Vote

3715-06-R: The International Union United Automobile, Aerospace and Agricultural Implement Workers of America (Applicant) v. Wallaceburg Preferred Partners Corp. (Respondent)

Unit: "all employees of Wallaceburg Preferred Partners Inc. in the Municipality of Chatham Kent, save and except office, clerical and sales staff, facilitators and persons above the rank of facilitator." (121 employees in unit)

Number of names of persons on revised voters' list	110
Number of persons who cast ballots	101
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	100
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	29
Number of ballots marked against applicant	71
Number of ballots segregated and not counted	1

2082-07-R: International Union of Operating Engineers, Local 793 (Applicant) v. Carman Construction Inc. (Respondent)

Unit: "all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors in the employ of the

responding party in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario and all employees engaged in the operation of cranes, shovels, bulldozers or similar equipment, and those primarily engaged in the repairing or maintaining of same, and employees engaged as surveyors, in the employ of the responding party in all other sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building; within a radius of 81 kilometers (approximately 50 miles) of the Timmins Federal Building save and except non-working foremen and persons above the rank of non- working foreman" (25 employees in unit)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	24
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	22
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	21

3877-07-R: Canadian Union of Public Employees (Applicant) v. Town of Tillsonburg (Respondent)

Unit: "all employees in the Town of Tillsonburg Fire Services Department in the County of Oxford save and except volunteer fire fighters, the Deputy Chief and persons above the rank of Deputy Chief" (8 employees in unit)

Number of names of persons on revised voters' list	8
Number of persons who cast ballots	7
Number of segregated ballots cast by persons whose names appear on voter's list	7

0339-08-R: United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. Stage West All Suite Hotel (Respondent)

Unit: "all employees of Stage West All-Suite Hotel and Theatre Restaurant, located at 5400 Dixie Road, in the City of Mississauga, Ontario, save and except assistant managers, persons above the rank of assistant managers, office and clerical staff, and anyone covered by an existing collective bargaining agreement." (155 employees in unit)

Number of names of persons on revised voters' list	198
Number of persons who cast ballots	179
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	137
Number of segregated ballots cast by persons whose names appear on voter's list	40
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	1
Number of ballots marked in favour of applicant	54
Number of ballots marked against applicant	88
Number of ballots segregated and not counted	36

0574-08-R: United Food and Commercial Workers International Union, (UFCW Canada) (Applicant) v. Holiday Inn Express Hotel and Suites (Respondent)

Unit: "all employees of Holiday Inn Express Hotel and Suites, located at 10 Nevets Road, in the City of Brampton, Ontario, save and except supervisors, persons above the rank of supervisors, front desk, night auditors, sales, office and clerical staff." (11 employees in unit)

Number of names of persons on revised voters' list	11
Number of persons who cast ballots	10
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	5
Number of ballots segregated and not counted	0

0675-08-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Applicant) v. London Honda Car Sales Inc. (Respondent)

Unit: "all employees at London Honda Car Sales in the City of London, Ontario save and except supervisors, persons above the rank of supervisors, office and sales staff service advisors and persons regularly employed for not more than twenty-four (24) hours per week." (25 employees in unit)

Number of names of persons on revised voters' list	29
Number of persons who cast ballots	27
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	26
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	16
Number of ballots segregated and not counted	1

0763-08-R: Teamsters Local Union No. 879 (Applicant) v. K & R Lafarge Cayuga (Respondent)

Unit: "all employees of K & R Lafarge Cayuga at its cement plant in the town of Cayuga, save and except batcher, persons above the rank of batcher, sales and office staff." (3 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	0
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

0798-08-R: Teamsters Local Union No. 938 (Applicant) v. Stock Transportation Ltd. (Respondent)

Unit: "all drivers and driver trainers of Stock Transportation Ltd. based at 60 McCulloch Avenue in the City of Toronto, excluding managers and persons above the rank of manager, office and clerical staff and summer students." (250 employees in unit)

Number of names of persons on revised voters' list	309
Number of persons who cast ballots	276
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	268
Number of segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	107
Number of ballots marked against applicant	161
Number of ballots segregated and not counted	8

0814-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Nahanni Steel Products Inc. c.o.b. as Jancox Stamping (Respondent)

Unit: "all employees of Nahanni Steel Products Inc. in the City of Brampton, save and except supervisors, persons above the rank of supervisor, and office, clerical and sales staff." (45 employees in unit)

Number of names of persons on revised voters' list	48
Number of persons who cast ballots	49
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	40
Number of segregated ballots cast by persons whose names appear on voter's list	7
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	16
Number of ballots marked against applicant	24
Number of ballots segregated and not counted	9

Applications for Certification Withdrawn

2496-07-R: Ontario Pipe Trades Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada (Applicant) v. Vicor Mechanical Ltd. (Respondent)

2767-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Pioneer Construction Inc. (Respondent) v. Teamsters Local Union No. 230, Northern Construction Workers' Union (Interveners)

3387-07-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rock Ridge Contractors Inc., Ken Fowler Enterprises Limited (Respondents)

3732-07-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 1291262 Ontario Limited o/a Mega Drywall and 1267989 Ontario Inc. o/a Duncan Drywall (Respondent)

3831-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Silverline Group Inc. (Respondent)

3924-07-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories, and Canada, Local 471 (Applicant) v. City of Kingston (Respondent) v. The Canadian Union of Public Employees and its Local 109 (Intervener)

0331-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Henry Heyink Excavating Ltd. and, Henry Heyink Construction Ltd (Respondents)

0722-08-R: Association des enseignantes et des enseignants franco-ontariens (Applicant) v. Le Conseil des écoles publiques de l'est de l'Ontario (Respondent) v. The Ontario Secondary School Teachers' Federation / La Fédération des Enseignantes et Enseignants des écoles Secondaires de L'Ontario ('FEESO'), Le syndicat canadien de la fonction publique section locale 3509 (Interveners)

0724-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Bluridge Inc. (Respondent)

0784-08-R: The Canadian Union of Public Employees (Applicant) v. Markham Stouffville Hospital (Respondent)

0831-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Leuschen Bros. Limited (Respondent)

0841-08-R: Ontario Nurses' Association (Applicant) v. Specialty Care Case Manor Long Term Care Centre (Respondent)

0845-08-R: International Alliance of Theatrical Stage Employees, Moving Picture Technicians, Artists and Allied Crafts of the United States, its Territories and Canada Local 822 (Applicant) v. St. Lawrence Centre for the Arts (Respondent)

FIRST AGREEMENT - DIRECTION

0476-08-FC: Labourers' International Union of North America, Local 1059 (Applicant) v. Scott Concrete Limited (Respondent) *(Withdrawn)*

0885-08-FC: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 302 (Applicant) v. Women's Crisis Services of Waterloo Region (Respondent) *(Withdrawn)*

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

2919-06-R: Ontario Public Service Employees Union (Applicant) v. The Ottawa Hospital and Eastern Ontario Regional Laboratory (Respondents) v. Canadian Union of Public Employees and its Local 4000 (Intervener) *(Withdrawn)*

0502-07-R: United Food and Commercial Workers Union Canada, Local 175 (Applicant) v. The Markey Family Funeral Homes Limited, Stoney Creek Funeral Home, Marlett Hamilton Funeral Homes, Marlett Dundas Funeral Homes (Respondents) *(Withdrawn)*

3003-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. B.N. Fenton Construction Ltd.;, 1494311 Ontario Ltd.;, J & J Excavating (Durham) Ltd. (Respondents) *(Granted)*

3211-06-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ozz Infrastructure Solutions Inc., Trom Electric Co. Ltd., Trom Electric Residential Ltd., Trom Electric Services Maintenance Ltd., CH Management and Consulting Group Limited, Strategic Cabling Services Inc., Fortis Electric Ltd., Deerglen Financial Services Ltd. (Respondents) *(Endorsed Settlement)*

1508-07-R: Construction and Allied Workers Local Union 607 Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Delsan Demolition Limited Environmental Abatement Services Inc. Delsan Environmental Group Inc. Philips Environmental Services Limited Delsan-A.I.M. Environmental Services Inc. (Respondent) *(Withdrawn)*

3392-07-R: International Union of Bricklayers and Allied Craftworkers, Local 7 (Applicant) v. Joe Arban, Joe Arban Contractor, Arban Contractors Ltd., Arban Terrazzo Tile & Marble Ltd., Arban Stoneworks Ltd., Queensdale Management Incorporated, Rideauview Marble Inc., Imperial Marble & Granite Suppliers Limited (Respondents) *(Endorsed Settlement)*

0183-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. PGS Forming Inc.;, 2138418 Ontario Inc. and Blueridge Inc. (Respondents) *(Endorsed Settlement)*

0565-08-R: Labourers' International Union of North America, Local 625 (Applicant) v. Precision Builders (Windsor) Limited, D'Amore Construction (Windsor) Limited, D'Amore Construction (2000) Limited also o/a D'Amore Construction Ltd. (Respondents) *(Dismissed)*

SALE OF A BUSINESS

2919-06-R: Ontario Public Service Employees Union (Applicant) v. The Ottawa Hospital and Eastern Ontario Regional Laboratory (Respondents) v. Canadian Union of Public Employees and its Local 4000 (Intervener) *(Withdrawn)*

3003-06-R: International Union of Operating Engineers, Local 793 (Applicant) v. B.N. Fenton Construction Ltd.;, 1494311 Ontario Ltd.;, J & J Excavating (Durham) Ltd. (Respondents) *(Granted)*

3211-06-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ozz Infrastructure Solutions Inc., Trom Electric Co. Ltd., Trom Electric Residential Ltd., Trom Electric Services Maintenance Ltd., CH Management and Consulting Group Limited, Strategic Cabling Services Inc., Fortis Electric Ltd., Deerglen Financial Services Ltd. (Respondents) *(Endorsed Settlement)*

1508-07-R: Construction and Allied Workers Local Union 607 Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Delsan Demolition Limited Environmental Abatement Services Inc. Delsan Environmental Group Inc. Philips Environmental Services Limited Delsan-A.I.M. Environmental Services Inc. (Respondent) *(Withdrawn)*

3392-07-R: International Union of Bricklayers and Allied Craftworkers, Local 7 (Applicant) v. Joe Arban, Joe Arban Contractor, Arban Contractors Ltd., Arban Terrazzo Tile & Marble Ltd., Arban Stoneworks Ltd., Queensdale Management Incorporated, Rideauview Marble Inc., Imperial Marble & Granite Suppliers Limited (Respondents) *(Endorsed Settlement)*

0183-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. PGS Forming Inc.; 2138418 Ontario Inc. and Blueridge Inc. (Respondents) *(Endorsed Settlement)*

0565-08-R: Labourers' International Union of North America, Local 625 (Applicant) v. Precision Builders (Windsor) Limited, D'Amore Construction (Windsor) Limited, D'Amore Construction (2000) Limited also o/a D'Amore Construction Ltd. (Respondents) *(Dismissed)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

2294-07-R: Peters Excavating Inc. (Applicant) v. Labourers' International Union of North America, Ontario Provincial District Council (Respondent) *(Withdrawn)*

0547-08-R: Azeema Sami (et al) (Applicant) v. United Food and Commercial Workers International Union Local 333 (Respondent) v. Best Western Executive Inn (Intervener) *(Granted)*

Unit: "all employees of Best Western Executive Inn at 38 Estate Drive in the City of Scarborough, Ontario [for the purpose of greater clarity this included employees designated as lead hand], save and except supervisors, persons above the rank of supervisors, managers, office and clerical staff, security staff, purchasing, sales staff, accounting staff and students employed during summer vacation period." (24 employees in unit)

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	22
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	21
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	8
Number of ballots marked against respondent	13
Number of ballots segregated and not counted	1

0710-08-R: Christine Larabie (Applicant) v. Teamsters Local Union 91 (Respondent) *(Dismissed)*

0785-08-R: Bargaining Unit Employees of Chartwell Select Oak Park Lakeshore (Applicant) v. SEIU Local 1.On Service Employees International Union (Respondent) v. Oak Park Lakeshore Inc. c.o.b. Chartwell Select Oak Park Lakeshore (Intervener) *(Dismissed)*

0964-08-R: Diane Fahey, Pamela Fraser, Doreen Hewitson, Ria Poissant, Catherine Smith (Applicants) v. Health Care & Service Workers Local 303, CLAC (Respondent) *(Terminated)*

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

0140-08-U: Simcoe Muskoka Catholic District School Board (Applicant) v. Ontario English Catholic Teachers' Association, O.E.C.T.A. Simcoe Muskoka Elementary Unit, Kate Tagseth and Leslie Grimley (Respondents) *(Withdrawn)*

0746-08-U: Menkes Ajax Holdings Ltd. and Custom Aluminum Inc. (Applicant) v. Mike Vukovic, Carlos Pimentel and Carpenters' Union, Central Ontario Regional Council, Local 27 (Respondent) *(Withdrawn)*

APPLICATIONS FOR DECLARATION OF UNLAWFUL LOCKOUT

0715-08-U: Annan & Bird Lithographers Ltd. (Applicant) v. Communications, Energy, and Paperworkers Union and its Local 591G, John Salter, Mike Egerton, Gord Hockins, Landale Jackson and Andrew Borg (Respondent) *(Granted)*

0736-08-U: Melodic Brook Developments Inc. and Custom Aluminum Inc. (Applicant) v. Mike Vukovic, Carlos Pimentel and Carpenters' Union, Central Ontario Regional Council, Local 27 (Respondent) *(Withdrawn)*

APPLICATION UNDER THE AMBULANCE SERVICES COLLECTIVE BARGAINING ACT

0627-08-M: The Canadian Union of Public Employees and its Local 4440 (Applicant) v. The Corporation of the United Counties of Leeds and Grenville (Respondent) *(Withdrawn)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

3748-03-U: Geoff Moulson and Ed Bernardinis (Applicants) v. Toronto Civic Employees' Union, Local 416, CUPE (Respondent) *(Withdrawn)*

1191-05-U: Gerald (Jerry) Migliarisi (Applicant) v. Directors Guild of Canada (Respondent) *(Dismissed)*

0488-06-U: Craig Cyr (Applicant) v. CAW Local 707 (Respondent) v. Ford Motor Company of Canada Ltd. (Intervener) *(Dismissed)*

0564-06-U; 0782-06-U: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Amacon Construction Ltd. and/or Amacon Development Group Inc. (Respondent); Amacon Construction Ltd. (Applicant) v. Universal Workers Union, Labourers' International Union of North America Local 183 (Respondent) *(Withdrawn)*

0823-06-U: Maria Avila (Applicant) v. Steel Workers Union Local #664 (Respondent) v. Foamex Canada Inc. (Intervener) *(Terminated)*

3307-06-U: Greater Toronto Sewer and Watermain Contractors Association (Applicant) v. Labourers' International Union of North America, Labourers' International Union of North America, Ontario Provincial District Council, and, Universal Workers Union, LIUNA Local 183 (Respondents) v. International Union of Operating Engineers, Local 793 (Intervener) *(Withdrawn)*

3339-06-U: Laura M. Del Fante (Applicant) v. Canadian Union of Public Employees and its Local 4705 (Respondent) *(Dismissed)*

4081-06-U: Carlo Butera (Applicant) v. CUPE and CUPE Local 133 (Respondent) v. The Corporation of the City of Niagara Falls (Intervener) *(Dismissed)*

0576-07-U: Robert Gilvear (Applicant) v. Canadian Union of Public Employees and its Local 4800 (Respondent) v. Hamilton Health Sciences (Intervener) *(Dismissed)*

0691-07-U: James Sacco (Applicant) v. Thomson Products Employees Association (Respondent) *(Withdrawn)*

0842-07-U: Keith Leveque (Applicant) v. International Brotherhood of Boilermakers, Iron Ship Builders, Black Smiths, Forgers and Helpers, Local 494D (Respondent) v. Lafarge Canada Inc. (Intervener) *(Dismissed)*

2526-07-U: Jeremy Woodcock (Applicant) v. United Steelworkers of America Local 6571 (Respondent) v. Gerdau Ameristeel Inc. (Intervener) *(Dismissed)*

2601-07-U: Carpenters' District Council of Ontario, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Decew Construction Inc. and, Labourers' International Union of North America, Local 1059 (Respondents) *(Withdrawn)*

2743-07-U: Kuldeep (Kelly) Bains (Applicant) v. Amalgamated Transit Union Local 1572 (Respondent) v. The Corporation of the City of Mississauga (Intervener) *(Withdrawn)*

2883-07-U: Neil Mavin (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 1285 (Respondent) v. SKD Company, Brampton Division (Intervener) *(Dismissed)*

2955-07-U: Canadian Union of Public Employees (Applicant) v. Inter-Cultural Neighbourhood Social Services (Respondent) *(Withdrawn)*

3024-07-U: Luann Silverthorn (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and Its Local 636 (Respondent) *(Withdrawn)*

3295-07-U: Dinardo C. Group Inc. (Applicant) v. Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Respondent) *(Dismissed)*

3350-07-U: Jim Elhage (Applicant) v. C.A.W. Local 707 (Respondent) v. Ford Motor Company (Intervener) *(Withdrawn)*

3420-07-U: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rock Ridge Contractors Inc., Ken Fowler Enterprises Limited (Respondents) *(Withdrawn)*

3430-07-U: Service Employees International Union, Local 1.on (Applicant) v. CSH Bon-Air Inc. (Respondent) *(Withdrawn)*

3491-07-U: International Brotherhood of Electrical Workers, Local 586 (Applicant) v. Four-O-One Electric Ltd. (Respondent) *(Withdrawn)*

3634-07-U: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. Stacom Baltic Inc. (Respondent) *(Granted)*

3661-07-U: Claire London (Applicant) v. Service Employees International Union, Local 204 (Respondent) *(Dismissed)*

3668-07-U: Abdul Ghaefar Junejo (Applicant) v. Canadian Union of Public Employees and its Local 966 (Respondent) v. The Regional Municipality of Peel (Intervener) *(Dismissed)*

3689-07-U: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. Lovett Electric Inc. (Respondent) *(Withdrawn)*

3720-07-U: Christopher John Muldoon (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) and its Local 397 (Respondent) *(Dismissed)*

3758-07-U: Canadian Union of Public Employees and its Local 4724-01 (Applicant) v. Catherine Carney-White and Ajax Pickering Women's Shelter Inc.(Herizon House) (Respondent) *(Withdrawn)*

3790-07-U: Euthie Morris (Applicant) v. Ontario Public Service Employees Union (Respondent) v. Ministry of the Attorney General (Intervener) *(Dismissed)*

3804-07-U: John Hazel Jr. (Applicant) v. Communications, Energy and Paperworkers Union of Canada, Local 324 (Respondent) v. Ainsworth Engineered Corp. (Intervener) *(Terminated)*

3838-07-U: Communications, Energy and Paperworkers Union of Canada Local 87-M (Southern Ontario Newspaper Guild) (Applicant) v. The Ottawa Citizen A Division of Canwest Mediaworks Publications (Respondent) *(Withdrawn)*

0075-08-U: Cuong Truong (Applicant) v. United Food and Commercial Workers International Union, Local 175 (Respondent) v. Strudex Fibres Limited (Intervener) *(Withdrawn)*

0078-08-U: Teresa Upper (Applicant) v. Canadian Union of Public Employees, Local 5100 (Respondent) v. Grand Erie District School Board (Intervener) *(Withdrawn)*

0079-08-U: Louise McCarthy (Applicant) v. Canadian Union of Public Employees, Local 4800 (Respondent) *(Withdrawn)*

0247-08-U; 0248-08-U; 0287-08-U: Larry Park (Applicant) v. Directors Guild of Canada (Ontario) (Respondent); Byron Lucas (Applicant) v. Directors Guild of Canada (Ontario) (Respondent); Ron Laugher (Applicant) v. Directors Guild of Canada (Respondent) *(Withdrawn)*

0391-08-U; 0886-08-U: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Applicant) v. Women's Crisis Services of Waterloo Region (Respondent) *(Withdrawn)*

0427-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Scott Environmental Group Limited (Respondent) *(Withdrawn)*

0485-08-U: Wayne Edward Tanner (Applicant) v. Canadian Union of Public Employees, Local 1176 (Respondent) v. Bluewater District School Board (Intervener) *(Dismissed)*

0507-08-U: Richard Woodward (Applicant) v. The North Bay Professional Firefighter's Association, Local 284 International Association of Firefighters (Respondent) *(Dismissed)*

0518-08-U: Shah Jahan Khan (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Respondent) *(Dismissed)*

0557-08-U: International Union of Operating Engineers, Local 793 (Applicant) v. Fortex Excavating Inc. (Respondent) *(Granted)*

0582-08-U: Christopher J. Baker (Applicant) v. Cambridge Professional Fire Fighter's Association Local 499 (Respondent) *(Dismissed)*

0628-08-U: Canadian Union of Public Employees and its Local 4440 (Applicant) v. The Corporation of the United Counties of Leeds and Grenville (Respondent) *(Withdrawn)*

0645-08-U: Rose Ann Mills (Applicant) v. CUPE Local 2437 (Respondent) *(Withdrawn)*

0754-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Henry Heyink Construction Ltd. (Respondent) *(Withdrawn)*

0837-08-U: Lewis Carroll (Applicant) v. Elementary Teachers' Federation of Ontario (Respondent) *(Withdrawn)*

0864-08-U: Ontario Public Service Employees Union (Applicant) v. Woodstock and District Developmental Services (known as WDDS) (Respondent) *(Withdrawn)*

APPLICATION FOR INTERIM ORDER

1952-06-M: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Thompson and Sons Construction and David Thompson (Respondents) *(Terminated)*

0452-08-M: International Union of Operating Engineers, Local 793 (Applicant) v. Labourers' International Union of North America, Local 506 and Ellis-Don Construction Ltd. and Metric Contracting Services Corporation (Respondents) *(Dismissed)*

0599-08-M: Canadian Construction Workers' Union (Applicant) v. Abtrex Contractors Inc. (Respondent) *(Withdrawn)*

APPLICATIONS FOR RELIGIOUS EXEMPTION

0376-08-M: Leone Chiatto (Applicant) v. Local Union 675, Drywall Acoustic Lathing & Insulation, United Brotherhood of Carpenters & Joiners of America, United Drywall Limited (Respondents) *(Withdrawn)*

JURISDICTIONAL DISPUTES

0502-08-JD: United Brotherhood of Carpenters and Joiners of America, Local 93 (Applicant) v. Labourers' International Union of North America, Local 527 and, 1561908 Ontario Inc. o/a Commercial Construction Ontario, Capco Management Services (Respondents) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

3327-07-OH: Roshan Charran (Applicant) v. Cinram International Inc. (Respondent) *(Withdrawn)*

3447-07-OH: Terry Barnes (Applicant) v. Sparling's Propane, Mike Campbell, John Hunter and Kelly Raven (Respondents) *(Withdrawn)*

3719-07-OH: Joseph Amato (Applicant) v. Elcan (Respondent) *(Withdrawn)*

0108-08-OH: Gwendoline C. Harper (Applicant) v. David Cutler Sandra DeCoito Steve Kerry (Respondent) *(Dismissed)*

0108-08-OH; 0412-08-OH: Gwendoline C. Harper (Applicant) v. David Cutler, Sandra DeCoito and Steve Kerry (Respondents); Georgina Edwards (Applicant)v. David Cutler, Steve Keery, Sandra DeCoito, Katrina, ADOC (Respondents) *(Dismissed)*

0246-08-OH: Xin Wang (Applicant) v. Knoll North America Corp. (Respondent) *(Withdrawn)*

0432-08-OH: Terry Alan Wilson (Applicant) v. Teahen & Teahen Building Supplies Ltd. o/a Home Hardware Building Centre (Respondent) *(Withdrawn)*

0570-08-OH: Sean Pirie (Applicant) v. Flexo Products (Respondent) *(Withdrawn)*

CONSTRUCTION INDUSTRY GRIEVANCES

2833-06-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Ozz Infrastructure Solutions Inc., Trom Electric Co. Ltd., Trom Electric Residential Ltd., Trom Electric Services Maintenance Ltd., CH Management and Consulting Group Limited, Strategic Cabling Services Inc., Fortis Electric Ltd. (Respondents) *(Endorsed Settlement)*

3187-06-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Trinity Contracting and Landscaping (Respondent) *(Withdrawn)*

3349-06-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. University Plumbing and Heating Ltd. (Respondent) v. Metropolitan Plumbing & Heating Association (Intervener) *(Granted)*

0630-07-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 46 (Applicant) v. Jacobs Catalytic Ltd. (Respondent) *(Withdrawn)*

0936-07-G; 0937-07-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Moretti Excavating Limited (Respondent) *(Withdrawn)*

1507-07-G: Construction and Allied Workers Local Union 607 Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Delsan-A.I.M. Environmental Services Inc. (Respondent) *(Withdrawn)*

1605-07-G: Universal Workers Union, L.I.U.N.A. Local 183 (Applicant) v. Tonar Cement Finish Inc. (Respondent) *(Withdrawn)*

2812-07-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Canadian Independent Sod Ltd. (Respondent) *(Withdrawn)*

3370-07-G: International Union of Operating Engineers, Local 793 (Applicant) v. Sterling Crane - A Division of Procrane Inc. (Respondent) *(Withdrawn)*

3394-07-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Jones Group Inc. (Respondent) *(Granted)*

3555-07-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Brass Monkey Installations (BMI) Ltd. and, Mr. Brian Palmer (Respondents) *(Granted)*

3759-07-G: International Brotherhood of Electrical Workers, Local 804 (Applicant) v. E. S. Fox Ltd. (Respondent) *(Withdrawn)*

3827-07-G: Sheet Metal Workers' International Association, Local 397 (Applicant) v. 1561387 Ontario Inc. o/a Lakehead Heating & Ventilation (Respondent) *(Endorsed Settlement)*

3882-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Vanbots Construction Corporation (Respondent) *(Dismissed)*

0134-08-G: Labourers' International Union of North America, Local 527 (Applicant) v. 1561908 Ontario Inc. o/a Commercial Construction Ontario, Capco Management Services (Respondent) *(Withdrawn)*

0197-08-G: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Millenium Drywall Inc. (Respondent) *(Withdrawn)*

0214-08-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Louis Jones Construction Ltd. (Respondent) *(Endorsed Settlement)*

0234-08-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 552 (Applicant) v. Fahrhall Mechanical Contractors Limited (Respondent) *(Terminated)*

0370-08-G: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Flynn Canada Ltd. (Respondent) *(Withdrawn)*

0441-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Rodco Reinforcing Steel Ltd. (Respondent) *(Terminated)*

0553-08-G: Canadian Union of Skilled Workers (Applicant) v. Hydro One Inc. (Respondent) *(Withdrawn)*

0590-08-G: Carpenters & Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. PGS Forming Inc. and, Pier Giorgio Silvestri (Respondents) *(Granted)*

0592-08-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Flynn Canada Ltd. (Respondent) *(Withdrawn)*

0617-08-G; 0655-08-G: Labourers' International Union of North America, Local 506 (Applicant) v. 1632422 Ontario Inc. c.o.b Troya Services (Respondent) *(Endorsed Settlement)*

0644-08-G: Labourers' International Union of North America, Local 1059 (Applicant) v. L'82 Construction Ltd. (Respondent) *(Terminated)*

0650-08-G: Labourers International Union of North America, Local 1081 (Applicant) v. Ball Construction Inc. (Respondent) *(Withdrawn)*

0656-08-G: Sheet Metal Workers' International Association Local 30 (Applicant) v. Via Roofing Enterprises (Respondent) *(Withdrawn)*

0689-08-G: The International Union of Painters and Allied Trades, Local Union 1795 (Applicant) v. K.G. Aluminum Installations Ltd. (Respondent) *(Granted)*

0690-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Standard Electric (Toronto 1985) Inc. (Respondent) *(Endorsed Settlement)*

0698-08-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local Union 93 (Applicant) v. Bar None Designs Corporation (Respondent) *(Endorsed Settlement)*

0738-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Rocan Construction Ltd., and Janine Campbell (Respondents) *(Endorsed Settlement)*

0769-08-G: Labourers' International Union of North America, Local 527 (Applicant) v. Moniz Forming Inc. (Respondent) *(Endorsed Settlement)*

0775-08-G: Labourers' International Union of North America, Local 527 (Applicant) v. Arban Stoneworks Ltd. and Arban Terrazzo Tile & Marble Ltd. (Respondent) *(Granted)*

0815-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. 1257132 Ontario Ltd. o/a PM Designs (Respondent) *(Granted)*

0848-08-G: The International Union of Painters and Allied Trades, Local Union 200 (Applicant) v. Thomas Nicholas Piscopo c.o.b. as TNP Contracting (Respondent) *(Granted)*

0866-08-G: Construction Workers Union Local 150 affiliated with the Christian Labour Association of Canada (Applicant) v. Group 92 Mechanical Inc. (Respondent) *(Withdrawn)*

0867-08-G: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Middlesex Drywall Ltd.; Niekohr Holdings Inc. (Respondent) *(Granted)*

0946-08-G: Sheet Metal Workers' International Association, Local 537 (Applicant) v. Earlscourt Metal Industries Ltd. (Respondent) *(Terminated)*

APPEALS - EMPLOYMENT STANDARDS ACT

1081-06-ES: Yu Jiang (Applicant) v. Yi-Xin Li o/a Sun Sun Restaurant and Directeur des normes d'emploi (Respondents) *(Terminated)*

1921-06-ES: Dragan Marinkovic Drugs Ltd. o/a Shoppers Drug Mart (Applicant) v. Marlene Johnston and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2957-06-ES: Thomas William Siqueira a Director of Cupples Inner Tubes of America Inc., High-Way Tubes Ltd., Ply-Tech Rubber Inc., Trent Rubber Industrial Products Inc., High-Tech Compounding Ltd. (Applicant) v. April McKinnon, Betty Perry, Jennifer Clodge, Kristy Rhodes, Ross Johnston, Chris Cross, Mike Cross, Matt Danilko, Jake Hebert, Rob Rogers, Bill Styles, Dave Taylor, Logan Weaver, Chris Woodman, Janet Arscott, Dale Brown, Mary Burke, Fred Charlie, Bonnie Charlie, Joyce Cooper, Nola Ham, Roger Hartin, Linda Howe, Robert Howe, Dorothy Mohr, Carol Molleson, Glenda Rhodes, Cathy Taylor, David Tufts, Danny Ellicott, Bill Graham, Ken McIntosh, Elizabeth Northey, Dave Perrin, Rose Perrin, Carol Richmond, Andreas Rittmann, Glen Smith, Richard Taylor, Bob Banks, Rick Brown, Vern Donaldson, Roger Gill, Ross Lee, Donald Marshall, Faye McCabe, Ron McCabe, John Nakashima, Raymond Riel, Ray Simmons, Lorne Snider, Giles Westerhout and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3317-06-ES: Mary-Lou Jean McVey (Applicant) v. Airport Motor Inn, and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0342-07-ES: Verhaegen Stubberfield Hartley Brewer Bezaire (Applicant) v. Karen St. Jacques and Director of Employment Standards (Respondents) *(Granted)*

0544-07-ES: Ineke Sutherland (Applicant) v. Curtis Taylor and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0827-07-ES: Spiros Politis o/a Steve's Baits (Applicant) v. Derrell LeSage and Director of Employment Standards (Respondents) *(Granted)*

1137-07-ES; 1138-07-ES: Joyne Lavides (Applicant) v. Rolanco Network Inc. and Director of Employment Standards (Respondents); Roberto Lavides (Applicant) Rolanco Network Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

1504-07-ES: Casino Rama Services Inc. (Applicant) v. Michelle Johnson, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1667-07-ES: Yusuf Ali (Applicant) v. AllianceOne Ltd./AllianceOne Ltee and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1834-07-ES: Fourogh Maghsoody (Applicant) v. 1565281 Ontario Inc. o/a Blush Spa & Salon and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1904-07-ES: Canadian Aesthetic Academy Inc. (Applicant) v. Boris Golan and Director of Employment Standards (Respondents) *(Granted)*

1932-07-ES: Dmitri Kondramachine (Applicant) v. 6629636 Canada Inc. o/a itravel 2000 and its subdivision Travelling Software Systems Limited, Director of Employment Standards (Respondents) *(Dismissed)*

2064-07-ES: 1225717 Ontario Limited, Exeter Produce & Storage Company, Limited (Applicants) v. James Roode and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2065-07-ES: 1225717 Ontario Limited, Exeter Produce & Storage Company, Limited (Applicants) v. Clare "Moe" Millian and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2066-07-ES: 1225717 Ontario Limited, Exeter Produce & Storage Company, Limited (Applicants) v. Judy Draper and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2067-07-ES: KNMP Inc. o/a Derry Dental Centre (Applicant) v. Susan Weber and Director of Employment Standards (Respondents) *(Withdrawn)*

2134-07-ES: Bikesports Ltd. (Applicant) v. Trent Casey and Director of Employment Standards (Respondents) *(Dismissed)*

2223-07-ES: Jun Alerta (Applicant) v. Shoppers Drug Mart Inc. and Director of Employment Standards (Respondents) *(Dismissed)*

2290-07-ES: Legacy Leather International Inc. (Applicant) v. Florence Slack and Director of Employment Standards (Respondents) *(Withdrawn)*

2314-07-ES: Gwendolyn Joan McHayle (Applicant) v. 1401832 Ontario Inc. c.o.b. Liberty Grand Entertainment Complex Inc., Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2345-07-ES: George Lyons Motors Limited (Applicant) v. Paul Vine and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2471-07-ES: Charles B. Cassin a Director of Can-Am Glass & Mirror Ltd. (Applicant) v. Richard Tanguay, Director of Employment Standards (Respondents) *(Terminated)*

2521-07-ES: Fawzy Esmaiel (Applicant) v. Shawarma Laguna and Director of Employment Standards (Respondents) *(Dismissed)*

2570-07-ES: Gary Felix (Applicant) v. Avro Heating and Air Conditioning Co. Ltd., Director of Employment Standards (Respondents) *(Granted)*

2678-07-ES: Jurands Flooring (Applicant) v. Norbert Stanczak and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2704-07-ES: Merlin Von Rabenau (Applicant) v. Allied Don Valley Hotel Inc. o/a Crowne Plaza Toronto Don Valley, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2736-07-ES: Michael Dicenzo, Director of Forever Young Spa & Wellness Centre Inc. (Applicant) v. Lisa Markovic, Cathy Tassone, Lori Wallace and Director of Employment Standards (Respondents) *(Dismissed)*

2752-07-ES: Hindy Najman (Applicant) v. Alma Faller and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2787-07-ES: Dmitri Kondramachine (Applicant) v. Solution Q Inc. and Director of Employment Standards (Respondents) *(Dismissed)*

2886-07-ES: Roxan Lee, a Director of Palma Brava Inc. (Applicant) v. Flordeliza Arce, Concetta Bosch, Arnold Rosales Camacho, Eleanor Campos, Hanna Cerny, Amanda Chan, Anu Radha Chander, Virginia Clayton, Edgar C. Dangase, Phuc Trung Diep, Trung Huu Diep, Geraldine Francisco, Susan Hickman, Huy Quoc Huynh, Paul C. Isla

Dung Chieu Lam, David E. Lee, Deborah C. Lee, Cam Quang Mac, Glicerio Nicolas Jr., Magy Sanbalian, Adolfo Sillar, Adam Spataro, Anna Staggopoulos, Sathiapama Subramaniam, Donna Vasalic, Long Wang and Director of Employment Standards (Respondents) *(Dismissed)*

2919-07-ES: Jeffrey Petermann (Applicant) v. Christian Horizons and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2963-07-ES: Jones & Associates, Chartered Accountants (Applicant) v. Anges Davies and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2981-07-ES: Flamborough Springs Inc. (Applicant) v. William J.S. Hendrie, Director of Employment Standards (Respondents) *(Dismissed)*

2983-07-ES: The Staffing Edge Inc. (Applicant) v. Jenny Silva-Cugali and Director of Employment Standards (Respondents) *(Withdrawn)*

3241-07-ES: Jonathan Essa A Director of Elements Restaurant And Lounge (Applicant) v. Aaron Loda, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3337-07-ES; 3397-07-ES: Mrs. Kristen Rayner (Applicant) v. The Investment Guild Insurance Agency Inc., Director of Employment Standards (Respondents); The Investment Guild Insurance Agency Inc. (Applicant) v. Mrs. Kristen Rayner, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3425-07-ES: Janice Doerr (Applicant) v. Children's Talent Education Centre and Director of Employment Standards (Respondents) *(Dismissed)*

3532-07-ES: JTH Tax, Inc. d/b/a Liberty Tax Service (Applicant) v. Lukhjdep Samra and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3541-07-ES: Gina Guthrie-McDiarmid (Applicant) v. Salon Concepts Spa Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

3600-07-ES: Timothy Quance (Applicant) v. Iluvit Inc. o/a Color Your World/ICI Paints and Director of Employment Standards (Respondents) *(Withdrawn)*

3788-07-ES: Faklan Health Services (Applicant) v. Melissa Bridgeman and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3798-07-ES: Francis Condron, a Director of Strecker and Associates Inc. (Applicant) v. Jason Tesser, and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3868-07-ES: Wally Chiu Drugs Ltd. o/a Shoppers Drug Mart (Applicant) v. Andre Hilton and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3871-07-ES: G.S. Janda Distribution & Transportation Ltd. (Applicant) v. Inderjit Singh Sekhon, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3872-07-ES: 2104492 Ontario Inc. Operating As Select Sandwich (Applicant) v. Sonia Afroz and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3905-07-ES: John Tucker (Applicant) v. J & J Hurdle Automotive Ltd. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0006-08-ES: James Edward Graham (Applicant) v. In-Transit Personnel Inc., and Director of Employment Standards (Respondents) *(Dismissed)*

0086-08-ES: Michelle Paroyan (Applicant) v. Verico Beacon Mortgages Inc. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0087-08-ES: Toronto Smart Cars Ltd. o/a North York Chrysler Jeep Dodge (Applicant) v. Bonnie Klerer and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0091-08-ES: L C L Navigation Limited (Applicant) v. Daniel R. Tracy and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0148-08-ES: Ana Bela de Castro (Applicant) v. Melissa Vassallo and Director of Employment Standards (Respondents) *(Dismissed)*

0319-08-ES: The Climatic Group Inc. (Applicant) v. Angela Godard and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0393-08-ES: Nuala Storm (Applicant) v. B.W. Law Limited Partnership o/a Ducartor Holdings Limited, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0394-08-ES: Moeller Electric Ltd. (Applicant) v. Eric Butchereit and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0400-08-ES: Eliza Lovrecich (Applicant) v. Yale Industrial Trucks Ontario Ltd. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0401-08-ES: Inspired By Beads Inc. (Applicant) v. Maria Pereira and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0405-08-ES: IZE (Applicant) v. Tina Khanian and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0500-08-ES: Patricia Struk (Applicant) v. Ontario Energy Savings Corp. and Director of Employment Standards (Respondents) *(Terminated)*

0587-08-ES: Jim Maratta Operating as East and West International Flat Bread (Applicant) v. Director of Employment Standards (Respondent) *(Terminated)*

0616-08-ES: Paul Chudzinski (Applicant) v. 1609362 Ontario Ltd. o/a Kelsey's Grand Park and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0844-08-ES: Angela G. Parise (Applicant) v. Drs. I. Novak & D. Shier DDS and Director of Employment Standards (Respondents) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

3845-05-HS: Black & McDonald Ltd. (Applicant) v. International Union of Operating Engineers, Local 793, Henry Phur, Inspector (Respondents) *(Withdrawn)*

0787-06-HS: E.C.C.I. Inc. (Applicant) v. Ministry of Labour (Respondent) *(Withdrawn)*

3377-06-HS: Riverview Gardens Residence (Applicant) v. Chris Vasey, Inspector (Respondent) *(Withdrawn)*

1395-07-HS: RONA Building Center 663556 Ontario Ltd. (Applicant) v. Joseph Tarasco and Wayne Murphy, Inspector (Respondents) *(Terminated)*

0544-08-HS: Canadian Tire Corporation Limited (Applicant) v. Ed Broadbent and Carl Broughton, Inspector (Respondents) *(Withdrawn)*

0658-08-HS: Lennox Drum Limited (Applicant) v. Joey Ouimet and Joseph Ah-Hone, Inspector (Respondents) *(Dismissed)*

0680-08-HS: Randy Purves (Applicant) v. Ministry of Labour (Respondent) *(Terminated)*

0768-08-HS: Nor-Lag Coatings Ltd. (Applicant) v. Brian Deer, Patrick Delarosbil and Joanne Noonan, Inspector (Respondents) *(Dismissed)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1537-07-ES: AWS Sales & Marketing (Applicant) v. John Bursey and Director of Employment Standards (Respondents) *(Dismissed)*

1655-07-U: Frederiki (Freda) Tzigeris (Applicant) v. United Steelworkers of America, Local 3950 District 6 (Respondent) *(Dismissed)*

1916-07-R: Canadian Construction Workers' Union (Applicant) v. WSFT Development Inc. (Respondent) *(Granted)*

2570-07-ES: Gary Felix (Applicant) v. Avro Heating and Air Conditioning Co. Ltd., Director of Employment Standards (Respondents) *(Granted)*

2573-07-ES: Comfort Hospitality Inc. o/a Days Inn (Applicant) v. Cliff Noble and Director of Employment Standards (Respondents) *(Dismissed)*

0284-08-ES: The Stereo Man Inc. (Applicant) v. Jason Merkley and Director of Employment Standards (Respondents) *(Terminated)*

CECBA - EXEMP: RELIGIOUS CONVICTION/BELIEF

0887-08-M: Radu Muresan, PhD, P.Eng. (Applicant) v. University of Guelph Faculty Association, University of Guelph (Respondents) *(Withdrawn)*

0901-08-M: Lambert Otten, PhD, P.Eng., FCSAE (Applicant) v. University of Guelph Faculty Association, University of Guelph (Respondents) *(Withdrawn)*

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APPLICATIONS DISPOSED OF BY THE ONTARIO LABOUR RELATIONS BOARD DURING JULY 2008

APPLICATIONS FOR CERTIFICATION

Bargaining Agents Certified Without Vote

2909-06-R: International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Canex Wall Systems Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Canex Wall Systems Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, painters and painters' apprentices in the employ of Canex Wall Systems Inc. in all sectors of the construction industry in the County of Peterborough (except for the geographic Township of Cavan), the County of Victoria (except for the geographic Township of Manvers) and the provisional County of Haliburton, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (7 employees in unit) (Clarity Note)

3754-07-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. ACG Contracting and Excavating Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of ACG Contracting and Excavating Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, carpenters and carpenters' apprentices in the employ of ACG Contracting and Excavating Limited in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (3 employees in unit)

3875-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. G. Melo Excavating Limited (Respondent)

Unit: "all construction labourers in the employ of G. Melo Excavating Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, construction labourers in the employ of G. Melo Excavating Limited in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (11 employees in unit)

0083-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Newton Bridge Solutions Ltd. (Respondent)

Unit: "all construction labourers and all carpenters and carpenters' apprentices in the employ of Newton Bridge Solutions Ltd. in all sectors of the construction industry within a radius of 57 kilometers (approximately 35 miles) of the City of Sudbury Federal Building, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

0343-08-R: International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Heritage Park Villas Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of Heritage Park Villas Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, painters and painters' apprentices in the

employ of Heritage Park Villas Inc. in all sectors of the construction industry in the Counties of Essex and Kent, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (6 employees in unit) *(Clarity Note)*

0629-08-R: IBEW Construction Council of Ontario (Applicant) v. Danco Electric Inc. (Respondent)

Unit: "all journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Danco Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, journeymen and apprentice electricians, journeymen and apprentice linemen, journeymen and apprentice network cabling specialists and communication installers in the employ of Danco Electric Inc. in all sectors of the construction industry in the Regional Municipality of Waterloo (except that portion of the geographic Township of Beverly annexed by North Dumfries Township), and in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (7 employees in unit)

1017-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Roma Paving Services Incorporated (Respondent)

Unit: "all construction labourers and all employees engaged in the operation of cranes, shovels, bulldozers and similar equipment and those primarily engaged in the repairing and maintaining of same in the employ of Roma Paving Services Incorporated in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (5 employees in unit)

1039-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Deluca Roofing Inc. (Respondent)

Unit: "all roofers and their helpers and metalmen in the employ of Deluca Roofing Inc. in all sectors of the construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1040-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Succession Development Corporation, Adapt-Able Design Inc. (Respondents)

Unit: "all construction labourers in the employ of Succession Development Corporation in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

1045-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. T.A. Andre & Sons (Ontario) Ltd. (Respondent)

Unit: "all construction labourers in the employ of T.A. Andre & Sons (Ontario) Limited in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United

Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (4 employees in unit)

1096-08-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. The MacKenzie Construction Group Inc. (Respondent)

Unit: "all painters and painters' apprentices in the employ of The MacKenzie Construction Group Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, painters and painters' apprentices in the employ of The MacKenzie Construction Group Inc. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non working foreman" (2 employees in unit)

1108-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Zanette Drywall Company Limited (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Zanette Drywall Company Limited in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, carpenters and carpenters' apprentices in the employ of Zanette Drywall Company Limited in all sectors of the construction industry in Prince Edward County, the geographic Townships of Lake, Tudor and Grimsthorpe and all lands south thereof in the County of Hastings, and the geographic Townships of Percy and Cramahe and all lands east thereof in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1202-08-R: United Brotherhood of Carpenters and Joiners of America, Local 249 (Applicant) v. Maurice's Masonry & Forming Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of Maurice's Masonry & Forming Ltd. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, carpenters and carpenters' apprentices in the employ of Maurice's Masonry & Forming Ltd. in all sectors of the construction industry in the County of Lennox and Addington, the County of Frontenac, and the geographic Townships of Rear Leeds and Lansdowne, Rear of Yonge and Escott, and all lands south thereof in the United Counties of Leeds and Grenville, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non- working foreman" (4 employees in unit)

1219-08-R: Carpenters Union, Central Ontario Regional Council, United Brotherhood of Carpenters and Joiners of America (Applicant) v. River Custom Building Inc. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of River Custom Building Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, carpenters and carpenters' apprentices in the employ of River Custom Building Inc. in all sectors of the construction industry in the Towns of Cobourg and Port Hope, and the geographic Townships of Hope, Hamilton and Alnwick in the County of Northumberland, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

1221-08-R: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. PDS Electric Inc. (Respondent)

Unit: "all electricians, electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of PDS Electric Inc. in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, electricians, electricians' apprentices, all linemen and linemen apprentices, all network cabling specialists and network cabling specialists' apprentices, and communication cable installers in the employ of PDS Electric Inc. in all sectors of the

construction industry in the City of Hamilton, the City of Burlington, that portion of the geographic Township of Beverly annexed by North Dumfries Township and that portion of the Town of Milton within the geographic Townships of Nassagaweya and Nelson, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (2 employees in unit)

1264-08-R: Drywall Acoustic Lathing and Insulation Local 675 of the United Bortherhood of Carpenters and Joiners of America (Applicant) v. MSF International Ltd. (Respondent)

Unit: "all carpenters and carpenters' apprentices in the employ of MSF International Ltd. In the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, carpenters and carpenters' apprentices in the employ of MSF International Ltd. In all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (4 employees in unit)

1278-08-R: The International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Domenic Fratia c.o.b. as Pro Panelling and Paint (Respondent)

Unit: "all painters and painters' apprentices in the employ of Domenic Fratia c.o.b. as Pro Panelling and Paint in the industrial, commercial and institutional sector of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman all painters and painters' apprentices in the employ of Domenic Fratia c.o.b. as Pro Panelling and Paint in all sectors of the construction industry in the City of Toronto, the Regional Municipalities of Peel and York, the Towns of Oakville and Halton Hills and that portion of the Town of Milton within the geographic Townships of Esquesing and Trafalgar, and the Towns of Ajax and Pickering in the Regional Municipality of Durham, excluding the industrial, commercial and institutional sector, save and except non-working foremen and persons above the rank of non-working foreman" (3 employees in unit)

Bargaining Agents Certified Subsequent to Vote

0812-08-R: Ontario Public Service Employees Union (Applicant) v. Frontenac County Childcare Centre (Respondent)

Unit: "all employees of the Frontenac County Childcare Centre in the City of Kingston and the County of Frontenac save and except ECE Centre Supervisor and those above the rank of ECE Centre Supervisor" (44 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	46
Number of persons who cast ballots	46
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	51
Number of segregated ballots cast by persons whose names appear on voter's list	27
Number of segregated ballots cast by persons whose names do not appear on voters' list	24
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	34
Number of ballots marked against applicant	12

0820-08-R: Communications, Energy and Paperworkers Union of Canada (Applicant) v. Kleenzone Ltd. (Respondent)

Unit: "all employees of Kleenzone Ltd. working at the campus of Sanofi Pasteur in the City of Toronto" (35 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	35
Number of persons who cast ballots	35
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of ballots marked in favour of applicant	21
Number of ballots marked against applicant	10
Number of ballots segregated and not counted	4

0878-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Omni Facility Services Canada Limited (Respondent)

Unit: "all employees of Omni Facility Services Canada Limited employed at Duffin Creek Water Pollution Plant, 901 McKay Road, Pickering, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff" (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0903-08-R: Teamsters Local Union 91 (Applicant) v. Stock Transportation Ltd. (Respondent)

Unit: "all mechanics employed by Stock Transportation Ltd. working in and out of the Kingston yard at 930 Coronation Blvd., Kingston, Ontario" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

0926-08-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Rexdale Community Health Centre (Respondent)

Unit: "all employees of the Rexdale Community Health Centre located at 8 Taber Road in the City of Toronto, save and except Coordinators and those above the rank of Coordinator, Directors, Physicians, Nurses, Nurse Practitioners, Registered Nurses, Registered Practical Nurses, Nurse Educators, Chiropodists, Administrative Secretary, Human Resources and Administrative Coordinator, Data Management Coordinator, Bookkeeper, Accounting and

Administrative Support Worker, students employed during the school vacation period who are paid pursuant to a government, school board, social service agency or other external program, casual workers, and contract workers" (35 employees in unit)

Number of names of persons on revised voters' list	28
Number of persons who cast ballots	34
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	12
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	9

0941-08-R: Teamsters Local Union 91 (Applicant) v. Stock Transportation Ltd. (Respondent)

Unit: "all school bus drivers employed by Stock Transportation Ltd. working in or out of 930 Coronation Blvd., Kingston, Ontario, excluding bus monitors, students, sales staff, dispatchers, mechanics, supervisors, and persons above the rank of supervisor" (141 employees in unit) *(Clarity Note) (Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	141
Number of persons who cast ballots	120
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	116
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	72
Number of ballots marked against applicant	44
Number of ballots segregated and not counted	4

0942-08-R: Teamsters Local Union No. 938 (Applicant) v. Bitumar (Hamilton) Inc. (Respondent)

Unit: "all employees of Bitumar (Hamilton) Inc. at 400 Eastport Blvd., Hamilton, Ontario, save and except supervisors and persons above the rank of supervisor, sales staff, clerical and summer students" (21 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	24
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	16
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	1

0949-08-R: UNITE HERE (Applicant) v. Kerry (Canada) Inc. (Respondent)

Unit: "all employees of Kerry Canada Inc., 3545 Nashua Drive, Mississauga, Ontario save and except supervisors, persons above the rank of supervisor, office, clerical, sales and laboratory staff" (18 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	19
Number of persons who cast ballots	17
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	14
Number of ballots marked against applicant	3
Number of ballots segregated and not counted	0

1047-08-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Sherbourne Health Centre (Respondent)

Unit: "all employees of Sherbourne Health Centre, located at 333 Sherbourne Street in the City of Toronto, save and except Managers, Directors, persons above the rank of Manager or Director, Physicians, Psychiatrists, Chiropodists, Naturopathic Doctors, Nurse Practitioners, Chiropractors, Consultants, Human Resource Coordinator, EMR Specialists, Administrative Assistant to Human Resources Coordinator, Executive Assistants, short-term contract workers, temporary agency workers, persons on fellowships, and students" (102 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	94
Number of persons who cast ballots	68
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	63
Number of segregated ballots cast by persons whose names appear on voter's list	4
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	49
Number of ballots marked against applicant	14
Number of ballots segregated and not counted	5

1055-08-R: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. AF Controls Canada Inc. c.o.b. Advance Fire Control (Respondent)

Unit: "all fire alarm technicians and technologists employed by AF Controls Canada Inc. c.o.b. Advance Fire Control working in the Metropolitan Toronto area" (2 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	2
Number of persons who cast ballots	2
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1061-08-R: Ontario Public Service Employees Union (Applicant) v. The Children's Aid Society of Ottawa (Respondent)

Unit: "all employees in the Information Technology Services department of the Children's Aid Society of Ottawa, save and except Administrators and those above the rank of Administrators" (4 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	3
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	3
Number of ballots marked against applicant	0
Number of ballots segregated and not counted	0

1079-08-R: International Association of Bridge, Structural, Ornamental and Reinforcing Ironworkers, Local 721 (Applicant) v. Richards-Wilcox Custom Systems Inc. (Respondent)

Unit: "all employees of Richards-Wilcox Custom Systems Inc., in the City of Hamilton, Regional Municipality of Hamilton-Wentworth, save and except forepersons and persons above the rank of foreperson, offices and sales staff and students employed during the school vacation period" (5 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	5
Number of persons who cast ballots	5
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	5
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	5
Number of ballots marked in favour of intervener	0
Number of ballots segregated and not counted	0

1097-08-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Border Pontiac Buick GMC Ltd. (Respondent)

Unit: "all employees of Border Pontiac Buick GMC Ltd. in the City of Niagara Falls, save and except supervisors and those above the rank of supervisor, commission sales representatives, service advisors, control tower staff, office staff and employees working less than 25 hours per week" (20 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	20
Number of persons who cast ballots	23
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	4
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	10
Number of ballots marked against applicant	3

Number of ballots segregated and not counted	10

1131-08-R: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, Local 128 (Applicant) v. Koch Heat Transfer Canada LP (Respondent)

Unit: "all employees of Koch Heat Transfer Canada in the City of Toronto, Ontario, save and except foremen, persons above the rank of foreman, maintenance employees, shipping and receiving employees, quality assurance employees, sales employees and office, technical and clerical employees" (37 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	37
Number of persons who cast ballots	36
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	35
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	2
Number of ballots marked in favour of applicant	25
Number of ballots marked against applicant	8
Number of ballots segregated and not counted	1

1166-08-R: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Asbury Building Services Inc. (Respondent)

Unit: "all employees of Asbury Building Services Inc. employed at 10 and 20 Carlson Court, in the City of Etobicoke, Ontario, save and except supervisors and persons above the rank of supervisor, office and clerical staff" (11 employees in unit) *(Having regard to the agreement of the parties.)*

Number of names of persons on revised voters' list	13
Number of persons who cast ballots	11
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	10
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	7
Number of ballots marked against applicant	4
Number of ballots segregated and not counted	0

Applications for Certification Dismissed Without Vote

2926-07-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. 763902 Ontario Inc. o/a Palm Rose Development (Respondent)

Applications for Certification Dismissed Subsequent to Vote

0765-08-R: Canadian Union of Public Employees (Applicant) v. Queensway-Carlton Hospital (Respondent)

Unit: "all office and clerical employees of the Queensway-Carlton Hospital located in the City of Ottawa and the Western Ottawa Valley, save and except supervisors and persons above the rank of supervisor." (180 employees in unit)

Number of names of persons on revised voters' list	310

Number of persons who cast ballots	155
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	119
Number of segregated ballots cast by persons whose names appear on voter's list	34
Number of segregated ballots cast by persons whose names do not appear on voters' list	2
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	71
Number of ballots marked against applicant	71
Number of ballots segregated and not counted	13

0792-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. TigerTel Communications Inc. (Respondent)

Unit: "all employees of Tiger Tel Communications Inc. in the City of Toronto, save and except supervisors, persons above the rank of supervisor, Trainers, Quality Control, Office, Clerical, Technical and Human Resource employees." (205 employees in unit)

Number of names of persons on revised voters' list	205
Number of persons who cast ballots	157
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	110
Number of segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names do not appear on voters' list	32
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	45
Number of ballots marked against applicant	65
Number of ballots segregated and not counted	47

0850-08-R: Teamsters Local Union No. 879 (Applicant) v. North American Trade Schools (Respondent)

Unit: "all instructors in the employ of the employer in the City of London, Province of Ontario." (13 employees in unit)

Number of names of persons on revised voters' list	15
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	11
Number of segregated ballots cast by persons whose names appear on voter's list	2
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	4
Number of ballots marked against applicant	7
Number of ballots segregated and not counted	2

0877-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Canada Fibers Ltd. (Respondent)

Unit: "all employees of Canada Fibers Ltd. in the City of Greater Sudbury, save and except supervisors and persons above the rank of supervisor and office staff" (14 employees in unit)

Number of names of persons on revised voters' list	25

Number of persons who cast ballots	21
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	15
Number of segregated ballots cast by persons whose names appear on voter's list	6
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	6
Number of ballots marked against applicant	13
Number of ballots segregated and not counted	2

0895-08-R: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. Leuschen Bros. Limited (Respondent)

Unit: "all employees of Leuschen Bros. Limited working in and out of the City of Greater Sudbury and the Municipalities of French River, Markstay-Warren and St. Charles, save and except supervisors and persons above the rank of supervisor, office, technical and sales staff." (287 employees in unit) *(Clarity Note)*

Number of names of persons on revised voters' list	287
Number of persons who cast ballots	265
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	179
Number of segregated ballots cast by persons whose names appear on voter's list	81
Number of segregated ballots cast by persons whose names do not appear on voters' list	5
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	62
Number of ballots marked against applicant	117
Number of ballots segregated and not counted	86

1130-08-R: National Automobile, Aerospace, Transportation and General Workers' Union of Canada (CAW-Canada) (Applicant) v. Rothsay, A Member of Maple Foods Inc. (Respondent)

Unit: "all employees of Rothsay, A Member of Maple Leaf Foods Ltd. in the City of Hamilton, save and except office and clerical staff, supervisors and those above the rank of supervisor." (89 employees in unit)

Number of names of persons on revised voters' list	111
Number of persons who cast ballots	104
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	91
Number of segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	20
Number of ballots marked against applicant	71
Number of ballots segregated and not counted	13

1196-08-R: Teamsters Local Union 91 (Applicant) v. Centre 507 Association of Ottawa (Respondent)

Unit: "all full time, part time, and on-call employees at 507 Bank Street, Ottawa, Ontario excluding managers, supervisors, those above the rank of supervisor, cooks, cleaners, janitors, and security guards" (11 employees in unit)

Number of names of persons on revised voters' list	13

Number of persons who cast ballots	12
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	8
Number of segregated ballots cast by persons whose names appear on voter's list	3
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of applicant	2
Number of ballots marked against applicant	6
Number of ballots segregated and not counted	4

Applications for Certification Withdrawn

2483-07-R: International Union of Operating Engineers, Local 793 (Applicant) v. 1103546 Ontario Limited o/a Gravel Doctor Construction & Materials (Respondent)

3785-07-R: Labourers' International Union of North America, Local 625 (Applicant) v. Donison's Masonry (Respondent)

3826-07-R: International Union of Operating Engineers, Local 793 (Applicant) v. Silverline Group Inc. (Respondent)

3833-07-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Deb-Cor Group Ltd., Tri-Cor Construction Inc. (Respondents)

0141-08-R: International Union of Operating Engineers, Local 793 (Applicant) v. Innovative Earthworks Ltd. (Respondent)

0328-08-R: The International Union of Painters and Allied Trades, Local Union 114 (Applicant) v. Amadeo Developments Ltd. (Respondent)

0980-08-R: Service Employees International Union Local 2, Brewery, General and Professional Workers Union (Applicant) v. The Suites at 1 King West (Respondent)

1148-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. 1617659 Ontario Ltd. o/a Power Environmental Services Inc. (Respondent)

1192-08-R: National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW Canada) (Applicant) v. KML Windows Incorporated (Respondent)

1207-08-R: United Food and Commercial Workers International Union (UFCW Canada) (Applicant) v. Invest Hotels GP o/a Holiday Inn Select Oakville (Respondent)

APPLICATIONS FOR DECLARATION OF RELATED EMPLOYER

3357-06-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Granolite Company Limited, Canex Wall Systems Inc. (Respondents) *(Withdrawn)*

2510-07-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wintrade Inc. and, 2111417 Ontario Inc. (Respondents) *(Endorsed Settlement)*

3149-07-R: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Regina Construction Limited and, J.P.K. Contracting Ltd. (Respondents) *(Withdrawn)*

3861-07-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. M.E.M. Contracting and, M I C Cosntruction Inc. (Respondents) *(Endorsed Settlement)*

0944-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Deb-Cor Group Ltd. and, Tri-Cor Construction Inc. (Respondents) *(Withdrawn)*

SALE OF A BUSINESS

3357-06-R: International Union of Painters and Allied Trades, Local 1891 (Applicant) v. Granolite Company Limited, Canex Wall Systems Inc. (Respondents) *(Withdrawn)*

2510-07-R: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Wintrade Inc. and, 2111417 Ontario Inc. (Respondents) *(Endorsed Settlement)*

3149-07-R: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. Regina Construction Limited and, J.P.K. Contracting Ltd. (Respondents) *(Withdrawn)*

3669-07-R: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 2222 (Applicant) v. Oxford Properties, The Cadillac Fairview Corporation Limited, Heritage Place Shopping Centre Inc., Sears Canada Inc. and, PRR Trust (Respondents) *(Withdrawn)*

3861-07-R: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. M.E.M. Contracting and, M I C Cosntruction Inc. (Respondents) *(Endorsed Settlement)*

0944-08-R: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. Deb-Cor Group Ltd. and, Tri-Cor Construction Inc. (Respondents) *(Withdrawn)*

APPLICATIONS FOR DECLARATION TERMINATING BARGAINING RIGHTS

3922-06-R: Paul Smith (Applicant) v. International Union of Painters and Allied Trades and The Ontario Council of the International Union of Painters and Allied Trades (Respondent) v. Ellis Glass and Mirror Ltd. (Intervener) *(Granted)*

Unit: "all glaziers and glazer apprentices and metal mechanics in the employ of the responding party in the industrial, commercial and institutional section of the construction industry in the Province of Ontario, save and except non-working foremen and persons above the rank of non-working foreman" (1 employees in unit)

Number of names of persons on revised voters' list	3
Number of persons who cast ballots	1
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	0
Number of ballots marked against respondent	1
Number of ballots segregated and not counted	0

0922-08-R: Kerry O'Brien-MacDougall and Lisa Nason (Applicant) v. Elementary Teachers' Federation of Ontario (Respondent) v. Lakehead Public Schools/Lakehead District School Board (Intervener) *(Granted)*

Unit: "the employer being the Lakehead District School Board (hereinafter referred to as the Board) recognizes the Elementary Teachers' Federation of Ontario (hereinafter referred to as the Union) as the bargaining agent for all Early

Childhood Educators and Occasional E.C.E.'s employed by the Board in its elementary panel, save and except supervisors and those above the rank of supervisor" (36 employees in unit)

Number of names of persons on revised voters' list	31
Number of persons who cast ballots	19
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	17
Number of segregated ballots cast by persons whose names appear on voter's list	1
Number of segregated ballots cast by persons whose names do not appear on voters' list	1
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	1
Number of ballots marked against respondent	18
Number of ballots segregated and not counted	0

1014-08-R: James Alexandre (Applicant) v. International Association of Machinists and Aerospace Workers, Local 235 (Respondent) v. The Governing Council of the University of Toronto (Intervener) *(Dismissed)*

Unit: "all Working Forepersons, Project Coordinator, Industrial Mechanics/Millwrights, Locksmiths, Apprentice Industrial Mechanic/Millwright, and Industrial Mechanic/Millwrights in the employ of the University of Toronto working in and out of the Facilities and Services and Physical Plant Departments, save and except person above the rank of Working Foreperson." (14 employees in unit)

Number of names of persons on revised voters' list	14
Number of persons who cast ballots	13
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	13
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0
Number of spoiled ballots	0
Number of ballots marked in favour of respondent	9
Number of ballots marked against respondent	4
Number of ballots segregated and not counted	0

1071-08-R: Diane Fahey, Pamela Fraser, Doreen Hewitson, Ria Poissant, Catherine Smith (Applicant) v. Health Care & Service Workers Local 303, CLAC (Respondent) *(Granted)*

1091-08-R: Carmen Rachel Bondy (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, USW Local Union 2020-43 (Respondent) *(Granted)*

1092-08-R: Jack Lafond, and Rob Mathieu on the behalf of the Employees of Rainbow Concrete (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Dismissed)*

1116-08-R: James Alexandre (Applicant) v. International Association of Machinists and Aerospace Workers, Local 235 (Respondent) v. The Governing Council of the University of Toronto (Intervener) *(Dismissed)*

1230-08-R: Carol Decoito (Applicant) v. Ontario Federation of Health Care Workers, LIUNA Local 1110 (Respondent) v. The WenLeigh Long-Term Care Community (Intervener) *(Terminated)*

1245-08-R: Canadian Union of Public Employees CUPE Local 2727 (Applicant) v. Canadian Union of Public Employees (Respondent) v. VHA Health and Home Support (Intervener) *(Granted)*

1260-08-R: CUPE Members, Local 4619 (Applicant) v. CUPE Local 4619 (Respondent) *(Terminated)*

Unit: "Employees of the South Asian Family Support Services including their LINC Centres in the City of Toronto, save and except Executive Director, Accountant/Bookkeeper, LINC Program Manager, Administrative Assistants, temporary and casual Employees. Any new positions in which an Employee exercises managerial or confidential functions, within the meaning of the Ontario Labour Relations Act, are also excluded from this bargaining unit" (55 employees in unit)

Number of names of persons on revised voters' list	57
Number of persons who cast ballots	51
Number of ballots excluding segregated ballots cast by persons whose names appear on voter's list	51
Number of segregated ballots cast by persons whose names appear on voter's list	0
Number of segregated ballots cast by persons whose names do not appear on voters' list	0

1261-08-R: Ron Moore (Applicant) v. Construction Workers Local 53, affiliated with Christian Labour Association of Canada (Respondent) v. Poleair Technical Inc. (Intervener) *(Granted)*

1276-08-R: Employees of McMaster Savings and Credit Union (Applicant) v. Canadian Office and Professional Employee Union Local 343 (Respondent) v. McMaster Savings and Credit Union Ltd. (Intervener) *(Withdrawn)*

1288-08-R: Praxair Distribution division of Praxair Canada Inc. (Applicant) v. International Union of Operating Engineers, Local 793 (Respondent) *(Terminated)*

APPLICATIONS FOR DECLARATION OF UNLAWFUL STRIKE

0950-08-U: Shaftesbury Aaron Stone Inc. (Applicant) v. The Alliance of Canadian Cinema, Television and Radio Artists ("ACTRA") and, Eda Zimler and, Barbara Larose (Respondents) *(Withdrawn)*

COMPLAINTS OF UNFAIR LABOUR PRACTICE

2699-04-U: Mario Morello (Applicant) v. Amalgamated Transit Union, Local 113 (Respondent) v. Toronto Transit Commission (Intervener) *(Terminated)*

3499-05-U: Martin Kelly (Applicant) v. CAW Local 4304 (Respondent) v. The Regional Municipality of Waterloo (Intervener) *(Withdrawn)*

2735-06-U: Labourers International Union of North America, Local 1059 (Applicant) v. H.J. Hayhoe Ltd. o/a Hayhoe Homes (Respondent) *(Withdrawn)*

3541-06-U: The International Union United Automobile, Aerospace and Agricultural Implement Workers of America (Applicant) v. Wallaceburg Preferred Partners Corp. (Respondent) *(Terminated)*

3581-06-U: Kim McQuillan (Applicant) v. Complex Services Inc. o/a Fallsview Casino Resort (Respondent) *(Withdrawn)*

3676-06-U: Allan Peters, Andrzej Wec, Brian Bax, Jean Chisholm, Joe Bezzo, Richard Lavery, Scott Chrest, Shelley Taylor, Ted Chorostecki, Wally Kudla, Cynthia Lloyd (Applicant) v. United Food & Commercial Workers Canada Local 175 (Respondent) v. 116741 Ontario Limited o/a E. Mudge's Appliances (Intervener) *(Dismissed)*

0599-07-U: Mechanical Contractors Association Ontario (Applicant) v. United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada and Ontario Pipe Trades

Council of the United Association of Journeymen and Apprentices of the Plumbing and Pipe Fitting Industry of the United States and Canada (Respondents) *(Withdrawn)*

0925-07-U: Communications, Energy and Paperworkers Union of Canada (Applicant) v. BPC Ontario Labs LP c.o.b. as MDS Diagnostics (Respondent) *(Withdrawn)*

1051-07-U: Charles Brown (Applicant) v. Teamsters Local Union No. 847 (Respondent) *(Dismissed)* 1145-07-U: Austin Elias, Nancy Gauvin, Alison Hepburn, Bob Crowther (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) v. Toronto District School Board (Intervener) *(Dismissed)*

1568-07-U: Quality Control Council of Canada (Applicant) v. Graff Diamond Products NDT Division (Respondent) *(Withdrawn)*

1600-07-U; 1840-07-U: UNITE HERE (Applicant) v. Delaware North Companies Sportservice and Rogers Media Inc. (Respondent) *(Withdrawn)*

2478-07-U: Lise Chartrand, Kevin Furlotte, Eugene Boisvert, Jacques Leduc, Richard Dagenais, Bernard Farley, Robert Whissel, Guy Monfils, David Crosby, Lawrence Brunet, Daniel Lavigne, Steve Brown, Ed O'Hara, Kenneth Sugrue, Barry Kelly, Ian Hodge, Gerrit Voskamp, Terry Macrae and Terry Little, on their own behalf and on behalf of a group of former employees of Loeb Canada Inc. (Applicant) v. Teamsters Local Union 91 (Respondent) v. Loeb Canada Inc. (Intervener) *(Dismissed)*

2950-07-U: The Society of Energy Professionals (Applicant) v. Independent Electricity System Operator (Respondent) *(Withdrawn)*

2960-07-U: Vance Lawrence Coulas (Applicant) v. Service Employees International Union Local 2 (Respondent) *(Withdrawn)*

3009-07-U: Joseph Michael Bodnar (Applicant) v. CAW Local 222 (Respondent) v. General Motors of Canada Limited (Intervener) *(Dismissed)*

3299-07-U: Robert F.M. Kennedy (Applicant) v. Toronto Civic Employees' Union, Local 416 (Respondent) v. The City of Toronto (Intervener) *(Dismissed)*

3308-07-U: Alina Wojciechowska (Applicant) v. United Food and Commercial Workers International Union Local 1000A (Respondent) *(Dismissed)*

3324-07-U: Jim Sedore and Sandra Sedore (Applicant) v. United Steelworkers, Local 889 (Respondent) *(Dismissed)*

3334-07-U: International Union of Operating Engineers, Local 793 (Applicant) v. 1103546 Ontario Limited o/a Gravel Doctor Construction & Materials (Respondent) *(Withdrawn)*

3474-07-U: Canadian Union of Public Employees (Applicant) v. Inter-Cultural Neighbourhood Social Services (Respondent) *(Withdrawn)*

3597-07-U: Carrie Hutchison (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW-Canada) (Respondent) v. Johnson Controls LP (Intervener) *(Dismissed)*

3934-07-U; 0796-08-U: Service Employees International Union Local 2.on Brewery, General and Professional Workers Union (Applicant) v. OLG Casino Brantford (Respondent) *(Withdrawn)*

0009-08-U: International Union of Operating Engineers, Local 793 (Applicant) v. Silverline Group Inc. (Respondent) *(Withdrawn)*

0010-08-U: Labourers' International Union of North America, Ontario Provincial District Council (Applicant) v. G. Melo Excavating Limited (Respondent) *(Withdrawn)*

0157-08-U: Newton Bridge Solutions Ltd. (Applicant) v. Labourers' International Union of North America, Local 493 and, Labourers' International Union of North America, Ontario Provincial District Council (Respondents) *(Dismissed)*

0242-08-U: Henry Swierszcz (Applicant) v. Directors Guild of Canada (Ontario) (Respondent) *(Withdrawn)*

0281-08-U: Jennifer Bennett and/or, 13 Members of the Union of Store #378 LCBO-OPSEU (Applicant) v. Ontario Public Service Employees Union Local #377 (Respondent) v. Liquor Control Board of Ontario (Intervener) *(Withdrawn)*

0302-08-U: Floyd Hodder (Applicant) v. National Automobile, Aerospace, Transportation and General Workers Union of Canada (CAW CANADA), Local 1285 (Respondent) v. TI Automotive Canada Inc. (Intervener) *(Dismissed)*

0304-08-U: International Association of Machinists & Aerospace Workers, Thunder Bay Lodge 1120 (Applicant) v. Toromont Industries Limited (Respondent) *(Dismissed)*

0359-08-U: Ottawa-Carleton District School Board (Applicant) v. Ontario Secondary School Teachers' Federation (Respondent) *(Withdrawn)*

0360-08-U: The Royal Conservatory of Music Faculty Association (Applicant) v. The Royal Conservatory of Music (Respondent) *(Withdrawn)*

0450-08-U: Melissa Balint (Applicant) v. CAW Canada, Local 1859 (Respondent) *(Withdrawn)*

0481-08-U: Canadian Union of Public Employees and its Local 1521-02 (Applicant) v. Community Living Association (Lanark County) (Respondent) *(Withdrawn)*

0578-08-U: United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union (United Steelworkers) (Applicant) v. TigerTel Communications Inc. (Respondent) *(Withdrawn)*

0851-08-U: Teamsters Local Union No. 879 (Applicant) v. North American Trade Schools (Respondent) *(Withdrawn)*

0860-08-U: Maria Cacaj for late John Cacaj (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, Local 7135 (Respondent) *(Dismissed)*

0869-08-U: Sheila Janes (Applicant) v. CAW Local 1986 (Respondent) v. Canlyte Inc. (Intervener) *(Withdrawn)*

0888-08-U: Norm Hillier (Applicant) v. CAW-TCA Canada, Local 195 (Respondent) *(Withdrawn)*

0914-08-U: United Brotherhood of Carpenters and Joiners of America, Local 18 (Applicant) v. City of Hamilton (Respondent) *(Withdrawn)*

0915-08-U: Silvano Lochner (Applicant) v. Municipal Property Assessment Corporation (Respondent) *(Dismissed)*

0950-08-U: Shaftesbury Aaron Stone Inc. (Applicant) v. The Alliance of Canadian Cinema, Television and radio Artists ("ACTRA") and Eda Zimler and Barbara Larose (Respondents) *(Withdrawn)*

1036-08-U: Mohammed Chowdhury (Applicant) v. Hotel Employees Restaurant Employees Union, Local 75 (Respondent) *(Terminated)*

1080-08-U: UNITE HERE Ontario Council (Applicant) v. Richards-Wilcox Custom Systems Inc. (Respondent) *(Withdrawn)*

1155-08-U: Mr. Francis Zuidinga (Applicant) v. Teamsters Canada, Local Union 938 (Respondent) *(Terminated)*

APPLICATION FOR INTERIM ORDER

0852-08-M: Teamsters Local Union No. 879 (Applicant) v. North American Trade Schools (Respondent) *(Withdrawn)*

0913-08-M: Labourers' International Union of North America, Local 1059 (Applicant) v. Martin Building Maintenance (Respondent) *(Granted)*

APPLICATIONS FOR CONSENT TO EARLY TERMINATION OF COLLECTIVE AGREEMENT

1122-08-M: Goodyear Canada Inc. - Ontario Logistics Centre (Applicant) v. United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied, Industrial and Service Workers International Union on Behalf of its Local 13571-31 (Respondent) *(Granted)*

1176-08-M: Dufferin-Peel Catholic District School Board (Applicant) v. The Dufferin-Peel Educational Resource Workers' Association (Respondent) *(Granted)*

1194-08-M: Dufferin-Peel Catholic District School Board (Applicant) v. Canadian Union of Public Employees Local 1483 (Plant Department) (Respondent) *(Granted)*

TRUSTEESHIP

2208-07-T: Canadian Union of Public Employees (Applicant) v. Canadian Union of Public Employees, Local 4276 (Respondent) *(Granted)*

3108-07-T: Operative Plasterers' and Cement Masons' International Association of the United States and Canada (Applicant) v. Operative Plasterers' and Cement Masons' and Restoration Steeplejacks' International Association of the United States and Canada, Union Local 598 (Respondent) *(Terminated)*

JURISDICTIONAL DISPUTES

2031-05-JD: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 67 (Applicant) v. Lockerbie & Hole Eastern Inc./ Adam Clark Company Ltd., International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 736 (Respondents) *(Dismissed)*

0605-07-JD: Waste Management of Canada Corporation (Applicant) v. Labourers' International Union of North America, Local 506 and Teamsters Local Union No. 419 (Respondents) *(Granted)*

1383-07-JD: International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. Greater Toronto Regional Council of Carpenters, Drywall & Allied Workers, Local 446 and P.J. Daly Contracting Limited (Respondents) v. Interior Systems Contractors Association and Acoustical Association Ontario (Interveners) *(Withdrawn)*

0123-08-JD: Labourers' International Union of North America, Local 1059 (Applicant) v. International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721, PCL Constructors Canada Inc. and Royal Fence Ltd. (Respondents) *(Withdrawn)*

APPLICATIONS FOR DETERMINATION OF EMPLOYEE STATUS

2174-07-M: S.E.I.U. Local 2.on, Brewery, General & Professional Workers Union (Applicant) v. Ontario Nurses' Association (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE OCCUPATIONAL HEALTH AND SAFETY ACT

3282-07-OH: Rosemond Owusu-Sekyere (Applicant) v. Muki Baum Association for the Rehabilitation of the Multi-Handicapped Inc. (Respondent) *(Withdrawn)*

0073-08-OH: Andrew Bechard (Applicant) v. KLM Stamping Inc. (Respondent) *(Withdrawn)*

0379-08-OH: Sila J.R. Joannie (Applicant) v. Cargill Meat Solutions (Respondent) v. United Food and Commercial Workers International Union, Locals 175 & 633 (Intervener) *(Dismissed)*

0734-08-OH: William J. LeGros (Applicant) v. K.F.S. Limited Tweed & Hickory (Respondent) *(Withdrawn)*

0910-08-OH: Gregory Gubinczki (Applicant) v. Toyotetsu Canada Inc. (Respondent) *(Withdrawn)*

COMPLAINTS UNDER THE ENVIRONMENTAL PROTECTION ACT

1452-07-EP: Ted Cooper (Applicant) v. City of Ottawa (Respondent) *(Dismissed)*

COLLEGES COLLECTIVE BARGAINING ACT

1282-08-U: College Compensation and Appointments Council (Applicant) v. Ontario Public Service Employees Union (For Support Staff Employees) (Respondent) *(Granted)*

CONSTRUCTION INDUSTRY GRIEVANCES

3403-06-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Joe Da Silva (c.o.b. using the business names "J D Cold Rooms" and "J D Installations") (Respondent) *(Withdrawn)*

0405-07-G; 0408-07-G: International Union Of Operating Engineers, Local 793 (Applicant) v. Drillco Foundation Co. Ltd. (Respondent) *(Withdrawn)*

0521-07-G: Greater Ontario Regional Council of Carpenters, Drywall & Allied Workers, Local 446 (Applicant) v. P.J. Daly Contracting Ltd. P.J. Daly Limited (Respondent) *(Withdrawn)*

1160-07-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. PCL Constructors Canada Inc. (Respondent) *(Withdrawn)*

1390-07-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Island Wide Electrical Services Inc. and, Fairhill Electric Ltd. (Respondents) *(Granted)*

1560-07-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 1946 (Applicant) v. P.J. Daly Contracting Ltd. (Respondent) *(Withdrawn)*

1561-07-G: Greater Ontario Regional Council of Carpenters, Drywall and Allied Workers, Local 1946 (Applicant) v. Rosmar Drywall & Acoustics Ltd. (Respondent) *(Withdrawn)*

2511-07-G: Carpenters and Allied Workers Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 211417 Ontario Inc. (Respondent) *(Endorsed Settlement)*

3148-07-G: United Brotherhood of Carpenters and Joiners of America, Local 397 (Applicant) v. J.P.K. Contracting Ltd. (Respondent) *(Endorsed Settlement)*

3638-07-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. Le Chateau Carpentry (Respondent) *(Dismissed)*

3862-07-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. M I C Construction Inc. (Respondent) *(Endorsed Settlement)*

0220-08-G: International Brotherhood of Electrical Workers, Local 530 (Applicant) v. D.M.W. Electrical Instrumentation Inc. (Respondent) *(Withdrawn)*

0270-08-G: The United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. 1498240 Ontario Limited (operating as Interpaving Limited) (Respondent) *(Terminated)*

0278-08-G: The United Brotherhood of Carpenters & Joiners of America, Local 2486 (Applicant) v. Titan Contracting (Windsor) Incorporated (Respondent) *(Endorsed Settlement)*

0673-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. Standard Electric (Toronto 1985) Inc. (Respondent) *(Endorsed Settlement)*

0693-08-G: Sheet Metal Workers' International Association, Local 30 (Applicant) v. Flynn Canada Ltd. (Respondent) *(Withdrawn)*

0728-08-G: International Brotherhood of Electrical Workers, Local 353 (Applicant) v. D. M. Hopper Electric Inc. (Respondent) *(Granted)*

0752-08-G; 0753-08-G: Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Robert Colagiacomo c.o.b. Tripar Interiors and Coland Developments Corporation (Respondent); Drywall Acoustic Lathing and Insulation Local 675, United Brotherhood of Carpenters and Joiners of America (Applicant) v. 1090163 Ontario Ltd. c.o.b. as Tri-Par Improvements and Coland Developments Corporation (Respondent) *(Granted)*

0777-08-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 666 (Applicant) v. Medcon Mechanical Ltd. (Respondent) *(Endorsed Settlement)*

0856-08-G: U.A. Local 853 Sprinkler Fitters of Ontario (Applicant) v. Depend-All Fire Systems Inc. (Respondent) *(Endorsed Settlement)*

0859-08-G: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. Carmichael Engineering Ltd. (Respondent) *(Withdrawn)*

0894-08-G: International Brotherhood of Electrical Workers, Local 105 (Applicant) v. Duke Electric (1977) Limited (Respondent) *(Withdrawn)*

0918-08-G: Labourers' International Union of North America, Local 506 (Applicant) v. Lilja Corp. and, Lilja Canada Corp. (Respondents) *(Withdrawn)*

0932-08-G: Sheet Metal Workers' International Association Local 30 (Applicant) v. Techaire Systems Canada Inc. (Respondent) *(Withdrawn)*

0953-08-G: Labourers' International Union of North America, Local 1059 (Applicant) v. Lafarge Canada Inc. (Respondent) *(Withdrawn)*

0954-08-G: Construction and Allied Workers Local 607 (Applicant) v. Rock Construction & Mining Inc. (Respondent) *(Withdrawn)*

0970-08-G: Labourers' International Union of North America, Local 1059 (Applicant) v. McKay-Cocker Construction Ltd. (Respondent) *(Withdrawn)*

0976-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Locals 721 and 736 (Applicant) v. Bulldog Rebar (Respondent) *(Endorsed Settlement)*

0977-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Locals 700, 721 and 765 (Applicant) v. SOQQVADDRO Airectors Inc. (Respondent) *(Withdrawn)*

0979-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 & 765 (Applicant) v. Vaughan Welding Ltd. (Respondent) *(Withdrawn)*

0984-08-G: Carpenters & Allied Workers, Local 27, United Brotherhood of Carpenters and Joiners of America (Applicant) v. Riverton Forming Inc. and, Franco Fontana (Respondents) *(Endorsed Settlement)*

0985-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. RBL Welding Services Ltd. (Respondent) *(Withdrawn)*

0986-08-G: International Brotherhood of Electrical Workers, Local 120 (Applicant) v. W.S. Nicholls Construction Inc. (Respondent) *(Withdrawn)*

0987-08-G: International Brotherhood of Electrical Workers Local 120 (Applicant) v. Trademark Industrial Inc. (Respondent) *(Withdrawn)*

0992-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. 2108703 Ontario Inc. o/a Onsite Contractors (Respondent) *(Granted)*

0993-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. 2108703 Ontario Inc. o/a Onsite Contractors (Respondent) *(Granted)*

1006-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 786 (Applicant) v. The State Group Inc. (Respondent) *(Granted)*

1028-08-G: Sheet Metal Workers' International Association Local 30 (Applicant) v. A-1 Cladding Ltd. (Respondent) *(Granted)*

1053-08-G: Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 880 (Applicant) v. Alstom Canada Inc. (Respondent) *(Withdrawn)*

1066-08-G: United Brotherhood of Carpenters and Joiners of America, Local 494 (Applicant) v. Eastern Construction Company Limited (Respondent) *(Withdrawn)*

1086-08-G: Labourers' International Union of North America, Local 506 (Applicant) v. Ellis-Don Construction Ltd. (Respondent) *(Withdrawn)*

1094-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. Wasero Construction (1991) Ltd. (Respondent) *(Granted)*

1095-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. Econo Excavating & Paving (1991) Co. Ltd. (Respondent) *(Granted)*

1119-08-G: Universal Workers Union, Labourers' International Union of North America Local 183 (Applicant) v. Life Construction Inc. (Respondent) *(Withdrawn)*

1120-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. Harmony Infrastructure Inc. (Respondent) *(Granted)*

1134-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. AMF All Metal Fabricating Ltd. (Respondent) *(Granted)*

1135-08-G: International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers, Local 721 (Applicant) v. Canadian Steel Innovations (Respondent) *(Withdrawn)*

1139-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. ARO Excavating Ltd. (Respondent) *(Granted)*

1149-08-G: United Association of Journeymen and Apprentices of The Plumbing and Pipefitting Industry of The United States and Canada, Local 527 (Applicant) v. MWS Solutions Inc. (Respondent) *(Endorsed Settlement)*

1168-08-G: United Association of Journeymen and Apprentices of the Plumbing & Pipe Fitting Industry of the United States and Canada Local Union 663 (Applicant) v. Global Heat Inc. (Respondent) *(Withdrawn)*

1193-08-G: Universal Workers Union, Labourers' International Union of North America, Local 183 (Applicant) v. North Rock Group Ltd. (Respondent) *(Withdrawn)*

1211-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. Mid Canada Construction Corp. (Respondent) *(Granted)*

1212-08-G: International Union of Operating Engineers, Local 793 (Applicant) v. Mid-Canada Construction Corp. (Respondent) *(Granted)*

APPEALS - EMPLOYMENT STANDARDS ACT

0274-06-ES; 0337-06-ES: Charles Bennett, Sigfried Mueller, Robert Gratton and Bob Sparrow, Directors of Agri-West Corporation (Applicant) v. Gordon Button, Scott Dingwall, Daniel Flipsen, Archie Garlough, Barbara Grubb, Roger Lafleche, Donna Laughlin, David Mayhew, Terry McElroy, Ronald McMahon, Steve McNaughton, Michael Nagel, Mark Pemberton, Edward Rusenstrom, Susan Schmidt, Roger Seguin, Donald Shayer, David Sinclair, Leo Vanderydt and, Director of Employment Standards (Respondents); Stan Vander Bosch, a Director of Agri-West Corporation (Applicant) v. Gordon Button , Scott Dingwall, Daniel Flipsen, Archie Garlough, Barbara Grubb, Roger Lafleche, Donna Laughlin, David Mayhew, Terry McElroy, Ronald McMahon, Steve McNaughton, Michael Nagel, Mark Pemberton, Edward Rusenstrom, Susan Schmidt, Roger Seguin, Donald Shayer, David Sinclair, Leo Vanderydt and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0955-06-ES: Ayub Khan (Applicant) v. Indian Rice Factory Inc. and Director of Employment Standards (Respondents) *(Withdrawn)*

1334-06-ES: Hainer's Discount Tire & Auto Parts Inc. (Applicant) v. Shane Moore and Director of Employment Standards (Respondents) *(Granted)*

1624-06-ES: Charles Bennett, Sigfried Mueller, Robert Gratton and Bob Sparrow, Directors of Agri-West Corporation (Applicant) v. Scott Dingwall and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3559-06-ES: Anthony Schubert (Applicant) v. Hendrickson International and Director of Employment Standards (Respondents) *(Dismissed)*

3777-06-ES: Ardelle D. Stoner (Applicant) v. Pinnacle Freight Specialists Inc. and Director of Employment Standards (Respondents) *(Dismissed)*

0765-07-ES: Integra Investigation Services Ltd. (Applicant) v. Robert Arnone and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0991-07-ES: Marites Ochoco (Applicant) v. Deborah MacDonald and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

1695-07-ES: Edward Roy (Applicant) v. Interstate Battery and Director of Employment Standards (Respondents) *(Dismissed)*

2193-07-ES: Sammy Poon (Applicant) v. 1335261 Ontario Inc. o/a Electro Super Price and Director of Employment Standards (Respondents) *(Granted)*

2616-07-ES: Hallistus Gabriel (Applicant) v. Spintex Yarns Ltd. And Director of Employment Standards (Respondents) *(Granted)*

2713-07-ES: Jeff Bird (Applicant) v. Mike Newman o/a Mike Newman Construction and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2718-07-ES: Kenneth R. Irwin, a Director of Deles Industries Limited (Applicant) v. Michael J. Ashton, Joey L. Harris, Mohammad Imtiaz, Jie Jiang, Elizabeth Jones, Abinash Ramnarayan, Ron W. Walzak and Director of Employment Standards (Respondents) *(Dismissed)*

2859-07-ES: Zeljko (Leo) Vecerin (Applicant) v. Reefer Sales & Service (Toronto) Inc. and Director of Employment Standards (Respondents) *(Granted)*

2918-07-ES: Credit River Company Inc/Caledon Hospitality Management Services Ltd. (Applicant) v. Allison Olmes and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

2978-07-ES: Amber Cara Zavitsky (Formerly Soeder) (Applicant) v. C.V. Wakely Contracting Ltd./C.V. Wakely Contracting Limited, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3051-07-ES: Sutherland Global Services Canada ULC (Applicant) v. Director of Employment Standards (Respondent) *(Withdrawn)*

3120-07-ES: Carlos Noguiera (Applicant) v. Expo Iron Works Limited, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3165-07-ES: J.M.W. Automotive Inc. (Applicant) v. James A. Mckie and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3287-07-ES: Atlantic Overhead Door Co. (Applicant) v. Giuseppe Locanto and Director of Employment Standards (Respondents) *(Dismissed)*

3339-07-ES: Paul Housego (Applicant) v. Madcap Antiques Ltd. o/a Turn of the Century Lighting, and Director of Employment Standards (Respondents) *(Granted)*

3426-07-ES: Hot 1 Promotions/Event Gallery Inc. (Applicant) v. Michal Ligus and Director of Employment Standards (Respondents) *(Dismissed)*

3506-07-ES: Debra Coleshill (nee Bobechko) (Applicant) v. Servomation Inc. o/a Centerplate and Director of Employment Standards (Respondents) *(Withdrawn)*

3564-07-ES: Robert E. Lively (Applicant) v. Sameday Roofing Systems Inc. o/a Sameday Roofing Systems and Director of Employment Standards (Respondents) *(Granted)*

3576-07-ES: Ketheeswary Amirthalingam (Applicant) v. Jeral Magdan Foods Inc./1003155 Ontario Limited o/a Tim Horton's and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3615-07-ES: Quadrad Manufacturing Limited (Applicant) v. Dave Mancebo and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

3849-07-ES: Donna Hovey (Applicant) v. Hartmann Controls Corp. and Director of Employment Standards (Respondents) *(Dismissed)*

0066-08-ES: Salvador Emanuel Oliveira (Applicant) v. 7 Days Burger House and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0085-08-ES: Denise Kempers (Applicant) v. Nestle Waters Canada and Director of Employment Standards (Respondents) *(Dismissed)*

0090-08-ES: Guang Ping Huang (Applicant) v. Lenstar Welding & Fabricators Ltd. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0117-08-ES: Abdulamir Mahdi (Applicant) v. The Fax Engineer Ltd. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0219-08-ES: Bruce Tupper (Applicant) v. Arco Sealant Company Inc. and, Director of Employment Standards (Respondents) *(Withdrawn)*

0350-08-ES: Ivan Turkalj (Applicant) v. Triumph Express Service Canada Inc. and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0353-08-ES: OD International Inc. o/a Office Depot (Applicant) v. David Nettle and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0459-08-ES: BCH Inc. (Applicant) v. John Krywiak and, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0489-08-ES: Maria Estela A Balangyao (Applicant) v. David & Natasha Embro and, Director of Employment Standards (Respondents) *(Terminated)*

0495-08-ES: Royale King International Trading Company Ltd. (Applicant) v. Jocelyn Li and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0496-08-ES: Michael Zack (Applicant) v. The Sofa & Furniture Corp. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0497-08-ES: 1297798 Ontario Inc. o/a Ontario Patient Transfer (Applicant) v. Daniel P. Shute and Director of Employment Standards (Respondents) *(Withdrawn)*

0498-08-ES: 1297798 Ontario Inc. o/a Ontario Patient Transfer (Applicant) v. Jason Hollingworth and Director of Employment Standards (Respondents) *(Withdrawn)*

0560-08-ES: Sign A Rama (Applicant) v. Zoe Knight and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0564-08-ES: Kevin Ash operating as Signs & Safety International (Applicant) v. Mr. Jeffery Armitage and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0586-08-ES: Ataollah Mozafarikakavandi, a Director of Natta Transport Limited (Applicant) v. Mohammadreza Pouzeshvaran and Director of Employment Standards (Respondents) *(Terminated)*

0620-08-ES: Multiplex Investment Group Inc. o/a Queen's Patisserie (Applicant) v. Crystal Lin and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0688-08-ES: 3D Interior Fashions Inc. (Applicant) v. Sue Brundia, and Director of Employment Standards (Respondents) *(Terminated)*

0719-08-ES; 0720-08-ES: Theresa Ogurian (Applicant) v. The Toronto Humane Society and Director of Employment Standards (Respondents) *(Withdrawn)*

0740-08-ES: Chyenne Nicol (Applicant) v. Fair & Fresh Inc. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0756-08-ES: Fairlane Performance Management Inc. (Applicant) v. Laura Keats and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0757-08-ES: Gloria Gorendar, a Director of 1052945 Ontario Limited o/a House Proud Home Improvements (Applicant) v. Angie Belair and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0759-08-ES: Angelo Carnevale a director of 971114 Ontario Ltd. o/a Michael Angelo Mould & Design (Applicant) v. Kevin Harkai, Jared Uzum, James Masse, David Green, Alain Balyan, Jamie Delisle, John Krivak, and Director of Employment Standards (Respondents) *(Terminated)*

0761-08-ES: Stephen Taylor (Applicant) v. Imperial Coffee and Services Inc. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0791-08-ES: Co-Up Towing Services Ltd. (Applicant) v. Mike Bedard and Director of Employment Standards (Respondents) *(Terminated)*

0806-08-ES: Skyway Paper Products Limited (Applicant) v. Martin Quigley and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0930-08-ES: Nhuan Minh Chung (Applicant) v. Custom Colour Labs Inc. and Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0982-08-ES: Theresa Montagnese (Applicant) v. Dr. Winnie S. Grewal Dentistry Professional Corporation, Director of Employment Standards (Respondents) *(Endorsed Settlement)*

0998-08-ES: Diamond Aircraft Industries Inc. (Applicant) v. Martin Sinclair and Director of Employment Standards (Respondents) *(Terminated)*

1069-08-ES: William Parsons (Applicant) v. Flanagan Foodservice Inc. and Director of Employment Standards (Respondents) *(Dismissed)*

APPEALS - OCCUPATIONAL HEALTH AND SAFETY ACT

0131-08-HS: Township of Lake of Bays (Applicant) v. Ontario Public Service Employees Union, Local 366, Ministry of Labour (Respondents) *(Dismissed)*

0780-08-HS: Her Majesty the Crown in Right of Ontario as Represented by The Ministry of Community Safety and Correctional Services (Applicant) v. Ontario Public Service Employees Union, Richard Den Bok, Inspector (Respondents) *(Withdrawn)*

0938-08-HS: SNC-Lavalin ProFac Inc. (Applicant) v. DEL Bridge Contracting Limited and Stracor Inc. and Antrim Mechanical Ltd. and Christopher Gazdik, Inspector (Respondents) *(Granted)*

1010-08-HS: Guild Electric Limited (Applicant) v. International Brotherhood of Electrical Workers, Local 353 and Goran Blanusa, Inspector (Respondents) *(Dismissed)*

1034-08-HS: Elementary Teachers' Federation of Ontario (Applicant) v. Greater Essex County District School Board and Rick Taggart, Inspector (Respondents) *(Dismissed)*

1051-08-HS: Her Majesty The Crown in Right of Ontario as represented by the Ministry of Community Safety and Correctional Services (Applicant) v. Ontario Public Service Employees Union and Rick Taggart, Inspector (Respondents) *(Dismissed)*

PUBLIC SECTOR LABOUR RELATIONS TRANSITION ACT, 1997

2452-07-PS: Champlain Community Care Access Centre (Applicant) v. Ontario Public Service Employees Union (Respondent) *(Withdrawn)*

3499-07-PS: Ontario Public Service Employees Union (Applicant) v. CML HealthCare (Respondent) *(Withdrawn)*

0137-08-PS: North East Community Care Access Centre (Applicant) v. West Parry Sound Health Centre, Ontario Nurses Association, Service Employees International Union (Respondents) v. Ontario Public Service Employees Union (Intervener) *(Granted)*

APPLICATIONS FOR RECONSIDERATION OF BOARD'S DECISION

1466-06-R: United Association of Journeymen and Apprentices of the Plumbing and Pipefitting Industry of the United States and Canada, Local 787 (Applicant) v. 849060 Ontario Inc. c.o.b. as Air Con Systems and 1667637 Ontario Inc. c.o.b. as Melink Canada and/or Enercon Systems (Respondent) *(Dismissed)*

1939-06-ES: Econome Inc., o/a Econome Lacombe Toilet Rental, a.k.a. Lacombe Toilet Rentals (Applicant) v. Michel Richard and, Director of Employment Standards (Respondents) (Disposition not available)

3776-06-ES: Tiffany Squire (Applicant) v. Salon Modella and, Director of Employment Standards (Respondents) *(Dismissed)*

4081-06-U: Carlo Butera (Applicant) v. CUPE and CUPE Local 133 (Respondent) v. The Corporation of the City of Niagara Falls (Intervener) *(Dismissed)*

1443-07-PE: Kirk Windibank (Applicant) v. Corporation of the City of Windsor (Respondent) *(Dismissed)*

2474-07-ES: Daniel Diena, a Director of Deles Industries Limited (Applicant) v. Michael J. Ashton, Joey L. Harris, Mohammad Imtiaz, Jie Jiang, Elizabeth Jones, Abinash Ramnarayan, Ron W. Walzak and, Director of Employment Standards (Respondents) *(Dismissed)*

2721-07-U: Robert William Edward Racicot (Applicant) v. Teamsters Local Union 847 (Respondent) *(Dismissed)*

3340-07-ES: Serge R. Daoust, a Director of 555 Church Street Inc. (Applicant) v. Joanne McGarry and Director of Employment Standards (Respondents) *(Dismissed)*

0485-08-U: Wayne Edward Tanner (Applicant) v. Canadian Union of Public Employees, Local 1176 (Respondent) v. Bluewater District School Board (Intervener) *(Dismissed)*

1096-08-R: The International Union of Painters and Allied Trades, Local Union 1891 (Applicant) v. The MacKenzie Construction Group Inc. (Respondent) *(Dismissed)*

1116-08-R: James Alexandre (Applicant) v. International Association of Machinists and Aerospace Workers, Local 235 (Respondent) v. The Governing Council of the University of Toronto (Intervener) *(Dismissed)*

PAY EQUITY ACT

1497-07-PE: Canadian Union of Public Employees and its Local 3 (Applicant) v. The Corporation of the Township of Plummer Additional (Respondent) *(Endorsed Settlement)*

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